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A

General Abridgment

OF

LAW and EQUITY

Alphabetically digeſted under proper TITLES

WITH

NOTES and REFERENCES

to the WHOLE.

By CHARLES VINER, *Eſq;*

Favente Deo.

ALDERSHOT *in* Hampſhire *near* Farnham *in* Surry:

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FH
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TO THE RIGHT HONOURABLE

Sir THOMAS PARKER, Knight,

Lord Chief Baron of the Court of
EXCHEQUER.

My LORD,

SInce I am prevented addreſſing this Part of my Work (as I intended) to your Lordſhip's Predeceſſor, the late Lord Chief Baron Probyn, as a Teſtimony of my Gratitude for the many Obligations I was under to him, and of which I ſhall always bear a Grateful Remembrance; It is with the greateſt Pleaſure, that I embrace this Opportunity of returning my Thanks to Your Lordſhip for the many Honours and Favours myſelf and my Work have received likewiſe from Your Lordſhip.

No Part thereof would probably have ever made its Appearance in Publick, had it not been for the great Encouragement Your Lordſhip gave me.

This

DEDICATION.

This, my Lord, has made me preſume to addreſs to Your Lordſhip this Part of that Work, ſo highly Honoured by Your Lordſhip's Approbation, and ſince by the Approbation of every Bench of Juſtice both in England and Ireland, (the greateſt Honour that can be done to any Author, and the beſt Recommendation any Work of Law is capable of) that I might teſtify to the World in the moſt Publick Manner, that I am, with the greateſt Veneration and Reſpect,

My LORD,

Your Lordſhip's

Moſt Oblig'd,

And Moſt Obedient Servant,

Charles Viner.

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(M. a) * LEAGUE and TRUCE.

Fol. 1-4. bis.

* The *Difference between* a League and a Truce is, That a Truce is a Ceſſation from War for a certain Time, but a League is an abſolute Striking of Peace. 4 Inſt. 156.—A Truce *is* an Agreement, whereby, tho' the War continues, yet all Hoſtilities do for a While ceaſe; for between War and Peace there is no Medium. It is but a bare Suſpenſion of the Acts of War. 1 Molloy 138. cap. 9. S. 1.

1. † IT is a Breach **of a Truce for one Realm** to baniſh the Commodities of the other Realm, **there being a Truce between them.**

† A *League* may be *broken* by levying of War, or by Ambaſſador or Herald. 4 Inſt. 152. cap. 26.—And ſays, that Brian held Opinion in 19 E. 4. 6. b. That *if all the Subjects* of England would *make War with a King in League with the King of England, without his Aſſent*, that ſuch a War is no Breach of the League. And in the **Duke of Norfolk's Caſe**, Hill. 14 Eliz. the Queſtion was, Whether the **Lord Eriſe**, and other Subjects of the King of Scots, that without his Aſſent had waſted and burnt divers Towns in England, and proclaimed Enemies, were Enemies in Law, within the Statute of 25 E. 3. the League being between the King and the Scots; and reſolved that they were Enemies 4 Inſt. 152. cap. 26.

Paſch. 36 Eliz. **Henry de Vale** and other *Frenchmen imported divers Manufactures*, as Cloth of Tiſſue, Cawles, Points &c. *Whereupon* **Tomlinſon** and other good *Merchants* of London, *exhibited divers Informations upon the Statute* 19 *H.* 7. *which prohibits the ſame*; Of whom *the Frenchmen complained at the Council Table*. And it was reſolved by the Lord Treaſurer Burleigh and the whole Council, That it was no Breach of the League between this Kingdom and France; for that *in the Articles of the League the Laws of either Kingdom are excepted*; and therefore if Tomlinſon the Subject being a French Merchant, ſhould trade into France, he muſt obſerve the Laws and Cuſtoms of France. 4 Inſt. 153. 154.

2. 27 H. 6. cap. 1. 28 H. 6. cap. 1. 4 E. 4. cap. 5. **between the Duke of Burgundy and the King of England.**

3. **1 Eliz. cap. 13. recites, That where by divers Statutes before it had been enacted, that no Subjects of the King of England ſhould** export or import any Merchandizes but in Ships of the King's Subjects &c. **Since the making of which Statute other Foreign Princes finding themſelves aggrieved with the ſaid ſeveral Acts, as thinking that the ſame were made to the Hurt and Prejudice of their Country and Navy, have made like Penal Laws againſt ſuch as ſhould ſhip out of their Countries in any other Veſſels than of their ſeveral Countries and Dominions; by Reaſon whereof, there hath not only grown great Diſpleaſure betwixt the Foreign Princes and the Kings of this Realm, but alſo the Merchants have been ſore grieved; for Remedy thereof be it enacted, That the Act of 5 R. 2. cap. 3. and 4 H. 7. cap. ſhall be void &c.**

4. **Rot. Parl. 8. H. 5. N. 5. Where before Accord was made between the Kings of England and Flanders, that** no Wools but of England ſhould be ſold in Flanders, and **that** no Cloths of England ſhould be ſold in Flanders, **upon Pain of Forfeiture of them, which Ordinance of Cloths holds yet in Flanders, and yet there are brought the Wools of Scotland, Arragon and Catalonia, and Spain, the Commons pray Remedy. Anſwer, It ſhall be ſearch'd in the Treaſury of the King, and in other Places, if any ſuch Alliance can be found.**

5. **Rot. Parl. 9 H. 5. N. 5. Pray the Commons, that where very great Plenty of** Wools **of Scotland, Catalonia and Spain is brought into Flanders, and there work'd more cuſtomably than uſual, by which the Price of Engliſh Wools is lowered; pleaſe the King to make ſuch Treaty and Requeſt to the Duke of Burgundy, that the ſaid Wools &c. be not there work'd, or otherwiſe that the Cloths made in England may be ſold in Flanders as they are in Brabant, Holland, and other Countries adjacent. Anſwer, That he will ſpeak that the Cloths of England may be ſold there.**

By this Statute Robbery, Spoiling, Breaking of Truces and Safe-Conducts by any of the King's Liege People and Subjects within England, Ireland and Wales, or upon the Main Sea, was adjudged and determined to be High Treason. But this Branch concerning High Treason is repealed by Statute 20 H. 6. 11. But by the said Act of 2 H. 5. for the better Observation of Truces and Safe-Conducts, a *Conservator Induciarum*, & Salvorum Regis Conductuum, was raised and appointed in every Port of the Sea by Letters Patents. His Office was, to inquire of all Offences done against the King's Truces and Safe-Conducts upon the Main Sea out of the Counties and out of the Liberties of the Cinque Ports, as Admirals of Custom were wont. 4 Inst. 152. cap. 26.

6. 2 H. 5. cap. 6. The Breach of Truce and Leagues made Treason. 29 H. 6. cap. 2. enlarged.

7. By Force of the Statute 27 E. 3. Statute-staple, cap. 13. The Chancellor alone without any Justice, has Power to relieve Merchants who are robbed upon the Sea. 2 R. 3. 2. Per all the Justices.

8. Speedy Remedy given to Strangers upon the Violation of Truce and Safe-Conduct. 31 H. 6. cap. 4. 14 E. 4. cap. 4. Where it is said that Offences against the Amities and Leagues &c. are to the great Slander of the King, and the universal Damage of all the Realm &c.

S. P. Arg 2 Show. 369

9. All Leagues or Safe-Conducts ought to be of Record, viz. *inroll'd in Chancery*, to the End the Subject may know who are in Amity with the King, and who not. 4 Inst. 152.

10. In all Treaties, the *Power of the one Party and the other ought to be equal.* 4 Inst. 152.

11. There are *four Kinds of Leagues*, viz. 1. Fœdus *Pacis*. And a Christian Prince may have this with an Infidel. 2dly. Fœdus *Congratulationis sive Consolationis*, which may likewise be with an Infidel. 3dly. Fœdus *Commutationis mercium sive Commercii*; and this may likewise be with an Infidel. 4thly. Fœdus *Mutui Auxilii*; but this cannot be with an Infidel or Idolater. And as concerning these four Leagues, the Laws of England are grounded upon the Laws of God. 4 Inst. 155.

12. A League made *between two Kings without naming of Successors*, does not extend to Successors, tho' by our Law Rex non intermoritur. 4 Inst. 156. (d) cites 9 E. 4. 2. a.

S. C. Keb. 514. pl. 94. says, That upon the Ambassador's Complaint to the Council, he submitted to pay all Duties, and now refused, and the Ambassador having gone without libelling in the Admiralty, the

13. One, who *came with Merchandizes from the Brasils, did not pay Custom there*, but promised to touch at Lisbon and to pay it there, which he did not do, but *came here into England, and offered to sell the Merchandize*; whereupon the *Portugal Ambassador here complained* to the King's Council, who for this and his refusing still to pay the Custom, committed him. Upon a Motion to bail him, the King's Counsel opposed it, because it would seem as a countenancing him in his Obstinacy against the King of Portugal, which *might occasion a Breach between the two Crowns.* But the Court thought he should be bailed, and that if they could prove any such Matter against him, they *might indict him for it*; but upon praying to inspect the Return before it be filed, he was remanded. Sid. 143. pl. 23. Pasch. 15 Car. 2. The King v. Indicalmois.

King's Counsel conceived it a Matter of State, and the King would send him into Portugal; and that the Court would not let him go [bail him] without sufficient Security to answer Information in the King's Court for cheating the King, in Regard the *King of Portugal intends to reprise and defaulk it out of the Queen's Portion.* Adjornatur. The King v. Judaicum Mayes.

14. Tho' there be *no actual War, yet if* there be *no League*, they may take up Arms and fight one another, for they are in Statu Belli. Arg. 2 Show. 369. in Case of East-India Company v. Sands.

15. If a League be *broken*, let the *Subject's Right* be what it will, it *is gone*; for on Breach of the League they become as Enemies. Arg. 2 Show. 370.

16. The Law vests the *sole Power of making Leagues* in the King alone. Arg. 2 Show. 369.

17. In

17. In all Leagues the *Municipal Laws of each Realm* are excepted. Arg. 2 Show. 369.

For more of League and Truce See 1 Molloy, cap. 7 8. 9.

(N. a) *Letters of Marque and Reprizal.*

Fol. 175. bis. See Admiralty.—See Prizes. †

†Much title in Viner.

1. IN the Regiſter, fol. 129. there is a Writ to the Earl of Flanders to do Right to J. and upon Default of Right, a Writ for an Arreſt here of the Goods and Body of him who did the Wrong, by taking or ſpoiling of the Goods of the Engliſh. F. N. 114. B.

2. 1 E. 1. Rot. Fin. Memb. 6. Rex Ballivis ſuis Novi Caſtri ſuper T. Salut. &c. Becauſe the Burgeſſes of the ſaid Vill have received great Damage in Flanders, and becauſe he would do Juſtice, he commands them quod bona & mercimonia Flanders de ceteris in Portu Villæ veſtræ prediƈtæ inventa arreſtari faciatis ita quod, the Burgeſſes ſhall have the third Part of the ſaid Goods for their Damage, and the other two Parts they ſhall keep donec aliud a Nobis receperitis in Mandat.

3. 28 E. 1. Rot. Pat. M. 13. Bernardus Civis Baion. depræ- If any Perſon ſhall be killed, wounded, or any ways damaged in a hoſtile Manner, in the Territories or dat. de Bonis ad Valent. 7000 l. in Portugal habuit Licenc. per Jo. de Britania Lieutenant de Aquitaine quod ipſe Gents de Regno Portugal, & eorum bona ubicunque infra Diſtrict. noſtrum contigerit ſecundum Legem Mercatoriam marcare retinere & appropriare poſſit quouſque eidem Reſtitutio facta fuerit; which Letters of Marque the King confirmed.

Places of any King or Potentate, to whom Letters of Requeſt are tranſmitted, and no Satisfaction ſhall be made to the Perſon injured, there is no Compulſion to reſort to the ordinary Proſecution, but Letters of Repriſal ſhall be iſſued. But where Misfortunes happen to Perſons or their Goods, reſiding in a foreign Country in Time of War, Repriſals are not to be granted; in this Caſe they muſt be contented to ſit down under the Loſs, for they are at their Liberty to relinquiſh the Place on the Approach of the Enemy, when they foreſee the Country is ſubject to Spoil and Devaſtation; and if they continue, they muſt partake of the Common Calamity. Gen. Treat. of Trade 213. 214.

4. 17 E. 1. Rot. Fin. Memb. 3. De Bonis & Mercimoniis Civium Burd. arreſtandis ob tranſgreſſiones Regi factas &c.

5. 22 E. 1. Rot. Fin. Memb. 3. De Bonis Mercatorum de Regno & poteſtate Regis Franciæ in Hibern. invent. arreſtand. & vendend. for Cauſe of the War &c.

6. 29 E. 1. Rot. Fin. Memb. 12. Arreſt of Goods of Merchants de Provence, for having ſtay'd in London ultra 40 Dies contra Libertates &c. See pl. 10.

7. 33 E. 3. Rot. Fin. Memb. 8. De Bonis mercatorum &c. arreſtandis &c.

8. 14 E. 2. lib. Parl. 91. Some Ships of Calais arreſted here for Robbery done to the Engliſh, and delivered upon the Letter of the King of France to have it reſpited; and upon Petition to the King by the Engliſh Merchants, it is anſwered, That the Letters ſhall be ſeen, and the Anſwer of the King to them; and if the Time of Reſpite be paſs'd, then let the Chancellor do to the Merchants that which Reaſon and Law will.

9. Rot. Pat. 27 E. 1. Memb. 5. Licence to P. of Spain to come into England with Merchandizes &c. Nolentes quod occaſione cujusdam arreſte, quod vocatur le Marque, quod nuper fieri conceſſimus pro hominibus Ducatus noſtri Aquitanie occaſionetur.

10. 27 E. 3 cap. 17. Stat. 2. Provided always that if our Liege People, Merchants or other, be indamaged by any Lords of ſtrange Lands, or their Subjects, and the ſaid Lords, (duly required,) fail of Right to our ſaid Subjects, we ſhall have the Law of Marque and of taking them again, as hath been uſed in Times paſt, without Fraud or Deceit; and if Debate ariſe between us and other Lords &c. the People and Merchants of ſuch Lords ſhall not be preſently ſubdued, but ſhall have * 40 Days after Proclamation, or more, if Need be, to depart the Land, as appears by the Statute more largely.

* See pl. 6

Letters of *Repriſal* were *granted long before*

11. 4 H. 5. cap. 7. If the Subjects of another King do contrary to the Tenor of the Truce made to any Subject of England, the Keeper of the Privy Seal [ſhall] make to the Party grieved Letters of Requeſt under the Privy Seal in a due Form; and if after ſuch Requeſt made, the Party required do not make * within a convenient Time due Reſtitution and Satisfaction to the Party grieved, then the Chancellor ſhall grant Letters of Marque to him in a due Form. And if any be ſo grieved by thoſe of Scotland, the Wardens of the Eaſt and Weſt Marches ſhall have Power to make Letters of Requeſt to him who does the Wrong, or to the Wardens of the Marches, or Conſervator of the Truce of Scotland, if he can well do it; or otherwiſe to make Proclamation in open Places upon the Marches, that the Wrong-doer ſhall make Reſtitution to the Party grieved; and if they do not do it in a convenient Time, the Party grieved ſhall have Letters of Marque in due Form &c.

* Fol. 176 Bis.

theſe Statutes by the Kings of England, by Virtue of their Prerogatives, nor was the King's Prerogative in the leaſt diminiſh'd by them, but remained at Common Law. Gen. Treatiſe of Trade &c. 212.——And this Statute does in no Reſpect reſtrain the King's Prerogative and Authority which he had at the Common Law, in judging the Conveniency and Time when to be executed. Molloy 30. cap. 2. S. 9.

12. Rot. Parl. 2. H. 5. 1 Part. N. 34. Letters of Marque againſt the Merchants of * Jeane confirmed, and how the Prizes brought in ſhall be ordered.

* Orig. is (Janvoies.)

Prynne's Abr. of Cotton's Records 541. 542. Nº. 34.

13. Rot. Parl. 3. H. 5. 1 Part. N. 27. An Impoſition put upon Cloths by the City of Baion; and for this prays Remedy by Repriſal here to the double upon theirs, [to be] taken here, if they do not reform it. But it is not enacted. Vide accordingly 3 H. 5. 2. Part of the laſt Petition.

Prynne's Cott. Rec. Abr. 546. Nº. 27. The Anſwer was, That the Officers of Bayon ſhall be driven to ſhew the Cauſes, whereupon Redreſs ſhall be made.

14. A Merchant of England ſhall not have any Writ of Repriſal for Debt due to him by Merchant Stranger upon Contract made beyond Sea, if the Merchant Stranger comes into England, or his Goods. F. N. 114. b. Tamen quere.

Expired.

15. 10 H. 6. cap. 3. It was complained that the Goods of divers of the Subjects of England were taken by the King of Denmark and his Lieges, being in Amity of the King, whereof they have not any Remedy of the ſaid King nor any other, in as much as none of them come to England, or have nothing there; and therefore it is enacted that the Keeper of the Privy-Seal for the Time being, ſhall have Power to make to the Party grieved, Letters of Requeſt under the Privy-Seal, without any other Purſuit to be made to any for Reſtitution to be had of the Goods ſo taken and to be taken; And if Reſtitution be not made by ſuch Letters, the King, by the Advice of his Council, ſhall provide to the Party grieved his Covenable Remedy according as the Caſe requireth.

Expired.

16. 20 H. 6. cap. 3. A Kind of Repriſal in Wales.

17. *In*

17. *In the Profecution* of Letters of Marque and Repriſal, *there muſt be 1ſt*, The *Oath of the Party* injured, *or other ſufficient Proof* touching the pretended Injury, and of the certain Loſs and Damage thereby ſuſtained. *2dly. A Proof of the due Proſecution for the obtaining of Satisfaction in a legal Way. 3dly. A Delaying* or Denial *of Juſtice. 4thly.* A *Complaint to his own Prince* or State. *5thly. Requiſition of Juſtice by him* or them, made *to the Supreme Head or State, where Juſtice in the ordinary Courſe was denied. 6thly. Perſiſtency* ſtill *in the Denial of* Juſtice. All which being done, Letters of Reprizal under ſuch Cautions, Reſtrictions and Limitations as are conſonant to Law, and as the ſpecial Caſe may require, may iſſue not only by the Jus Gentium & Civile, but by the Ancient and Municipal Laws of the Kingdom. Molloy 28. cap. 2. S. 6.

S. P. And then the Prince of that Country againſt whom the ſame are awarded, muſt repair the Damage out of his or their Effects who committed the Injuries, or if that proves deficient, it ought to fall as a Common Debt on his Country. 2 Gen. Treat. of Com. 210. cap. 10.

18. Reprizals granted by the Laws of England are of *two Sorts, Ordinary and Extraordinary*. The *Ordinary* are either *within the Realm or without*, and are always granted where any Engliſh Merchants or their Goods are ſpoiled or taken from them in Parts beyond the Sea by Merchant Strangers, and cannot upon Suit or the King's demanding Juſtice for him, obtain the ſame; he ſhall have, upon Teſtimony of ſuch Proſecution, a Writ out of the Chancery to arreſt the Merchant Strangers of that Nation, [or] their Goods here in England; the which is grantable to the Subject oppreſs'd, of Common Right, by the Chancellor or Keeper of England, who always in ſuch Cate hath the Approbation of the King or Council, or both, for his ſo doing. The other, which is for Satisfaction out of the Realm, is always under the Great Seal. Molloy 28. cap. 2. S. 7.

2 Gen. Treat. of Trade 210 &c. S. P.

19. The *Extraordinary* are by Letters of Marque for Reparation at Sea, or any Place out of the Realm, grantable by the Secretaries of State, with the like Approbation of the King or Council, or both; but they are only during the King's Pleaſure, and to weaken the Enemy during the Time of War, and may at any Time be revoked. Molloy 31. cap. 2. S. 10.

2 Gen. Treat. of Trade 211. &c. S. P.

20. A. had Letters of Reprizal *granted* to him by the King *for a great Sum of Money*, and therein was a *Clauſe, That no Treaty of Peace ſhould prejudice them.* The King by ſeveral Treaties of Peace with the Dutch, had expreſsly articled, That they ſhould not be prejudiced by theſe Letters Patents. Lord Chancellor refuſed to let the Point be argued, and ſaid that nothing could be ſaid for it, and that the Caſe was very proper in Chancery for the *repealing theſe Letters Patents*; for tho' the Bar was not ſo well appriz'd of it, the Chancery had Admiral Juriſdiction by the Statute 31 H. 6. N°. 66. or 68. which was never printed. And in Proof that a *Treaty of Peace may revoke and amortize Letters of Reprizal*, his Lordſhip ſaid that *the ſame may be done by a Truce, or by Letters of Safe-Conduct*; and as to this laſt Point cited * 11 H. 4. Rot. 66. and a Judgment of the like Nature given in the Parliament of France, and the like in the Parliament of England † 2 H. 5. N°. 34. And for Authority that a Truce had like Effect upon Letter of Reprizal, he cited the Roll of Parliament 10 H. 6. N°. 34. where the Danes, after a Truce made with them, had ſeized Engliſh Ships by Colour of Letters of Reprizal, there being no Proviſion made againſt them in the Truce, and the Parliament there petitioned the King for Letters of Marque againſt the Danes. Vern. 54. Paſch. 1682. The King v. Carew.

* Prynne's Cott. Rec. Abr. N°. 66. is, That John Cowley of Bridgwater prayeth, that he may take Letters of Marque and Privy Seal of all Frenchmen's Goods, having no Safe-Conduct of the King, to a certain Value, for certain his Ships and other Goods taken by the French in Time of Truce. The Anſwer was, That upon his Suit to the King, he ſhall have ſuch Letters requiſatory as are needful; and if the French refuſe to do him Right, the King will then ſhew his Right.

† Prynne's Cott. Rec. Abr. 541. N°. 34. Drue Barentine and others of London pray, That the Letters of Mart or Reprizal granted by the King againſt the Goods of the Merchants of Jeane may be confirmed.

firmed. Anſwer, The which the King granteth, and thereby provideth for the ſafe Keeping and well Ordering of the ſaid Goods.

21. Some Engliſhmen having fitted out a Privateer got a Commiſſion by *Letter of Marque from the Duke of Savoy*, and took a French Ship in which were ſeveral *Turks* and Tripolins. It was ſentenced in the Admiralty, that the Capture was not good in reſpect of ſuch Commiſſion, and alſo becauſe the Tripolins being in Peace with England, their Goods were not to be ſeiſed by Engliſh Ships or Men. 2 Vern. 592. Mich. 1707. Walton v. Hanbury.

Carth. 399. Hill. 8 W. 3. B. R. S. C.

22. By the Admiralty Law, the *Property of a Ship taken without Letters of Marque veſts in the King upon the taking*; and this upon the High Sea. Reſolved per tot. Cur. 12 Mod. 135. Trin. 9 W. 3. B. R. in Caſe of the King v. Brown.

See (P. a.) &c.

(O. a) *Contempts.*

Tenure by Homage is taken away by the Statute of 12 Car. 2. cap. 24. S. 1

1. INquiſition apud Lanceſton 6 E. 1. In the Exchequer. A. qui ſequitur pro Rege ſaith, that Dominus Rex ratione Regie dignitatis & Corone ſue habet Privilege quod Nullus in regno ſuo de aliquo qui ſit de Regno Anglie alicui Homagium ſive fidelitatem alicui facere debeat vel aliquis hujuſmodi Homagium, vel Fidel. ab aliquo recipere debeat niſi facta mentione de Fidel. Domino Regi debita eidem Domino Regi Fidelit. obſervand. Epiſcopus Eron has done Contrarium &c. In Contemptum &c. And the Biſhop put to anſwer; and refuſed; and upon this was condemned &c.

2. Et ibidem Comes Cornub. complains of the Biſhop of Eron for excommunicating of the Men of the Vill of Eſhe for taking his Duty due for the Paſſage over the River of Eſhe of the Paſſengers, which he has had Time out of Mind &c.

3. Rot. Parl. 17 E. 3. N. 26. Richard Heiron late of London Merchant, being a Liege-man of our King, and born in England, ſued John Walden Mayor of the Staple of Caleis and other Merchants of the Staple, and cauſed them to be arreſted in Flanders in the Court of the Duke of Burgundy held in Bruges, for certain Injuries ſuppoſed by him to be done within the Juriſdicton of the King of England at Calais; and after the * Defendants appealed to the Parliament of Paris, where they were diſmiſs'd by Sentence judicial, becauſe the Suits were grounded upon Matters ſuppoſed to be done in Places within the Juriſdiction of the King of England, and the Parties Plaintiffs and Defendants were Subjects to the ſame King of England, and after the ſame Plaintiff ſues them again in a Foreign Court; and therefore upon all this Matter ſhewn, it is enacted that a Writ of Proclamation ſhall iſſue, commanding him to ſurceaſe his ſaid Actions, and that if he hereafter ſues the ſaid Defendants out of the Realm of England, for any Matter determinable under the Obedience of the King of England, or where he has Juriſdiction, then he ſhall be put out of the King's Protection, and ſhall forfeit all his Lands and Tenements, Goods and Chattels, and that no Pardon ſhall be available to him.

* Fol. 177. Bis.

4. The *Refuſing to be examined before a Committee of Council* is a great Contempt. 12 Rep. 94. The Counteſs of Shrewsbury's Caſe.

* See Indictment (B) (C) (D)—— And ſee

5. As to this Head of Contempts, ſo far as it concerns this Title of Prerogative, Mr. Serjeant Hawkins divides it into four Parts. 1. Contempts * *againſt his Palace or Courts of Juſtice.* 2dly. Againſt *his* † *Prero-*

† *gative.*

gative. 3dly. Againſt *his* ‡ *Perſon or Government.* 4thly. Contempts againſt ‖ *his Title.* Hawk. Pl. C. 56. cap. 21.

Striking, infra.

† Hawk. Pl. C. 59. cap. 22. divides this into three Parts, viz. 1. Refuſing to aſſiſt the King for the Publick Good. 2dly. Preferring the Intereſt of a Foreign Prince to that of our own. 3dly. Diſobeying the King's lawful Commands or Prohibitions.

‡ Ibid. 60. cap. 23. All Contempts againſt the King's Perſon or Government are very highly Criminal, and puniſhable with Fine and Impriſonment, and ſometimes with the Pillory, by the Diſcretion of the Judges, upon Conſideration of all the Circumſtances of the Caſe; but inaſmuch as it is generally obvious to Common Senſe, in what Caſes, and to what Degree a Man is guilty of this Offence, and it would be endleſs to enumerate all the Particulars, the Serjeant ſays he ſhall content himſelf with glancing at ſome of the moſt general Heads; which the Reader may ſee there.

‖ The Serjeant divides this into two Kinds, viz. 1. *Denying his Title.* 2dly. *Refuſing* to take *the Oaths required by Law for the Support of his Government.* Hawk. Pl. C. 61. cap. 24. In which ſaid ſeveral Chapters the Reader may ſee the ſaid ſeveral Matters more fully treated of and explained.

(P. a) * *Premunire at the Common Law.*

*Some hold an Opinion that this Writ is *called* a Premunire, *becauſe it doth fortify Juriſdictionem jurium regiorum Coronæ ſuæ*, of the Kingly Laws of the Crown, *againſt Foreign Juriſdiction*,

1. H. 24. E. 3. B. R. Rot. 13. **The King miſit hic 4 literas ſuas diverſis Clericis ſuis** dimorantibus apud Romam **qui quamplurima fecerunt ibid. in Derogationem Corone Regie** præcipiendi quod viſis literis ſuis immediate feſtinarent in Angliam, **& preſentent ſe coram Concilio Regis reſponſur. ad ea que ex parte Regis obicerentur &c. And Roger Holme, for not coming according to the Command, committitur Mariſchal. and after to the Tower of London,** & quod omnia bona quam Spiritualia tam Temporalia in manus Regis capiantur &c. **Poſtea pardonatur. (It ſeems this was a Premunire, for he had not any Lands.)**

and againſt the Uſurpers upon them, as by diverſe Acts of Parliament appears. *But in Truth* it is ſo called from a Word in the Writ; for the Words of the Writ be, Præmunire facias præfatum A. B. &c. quod tunc ſit Coram nobis &c. where *Premunire is uſed for Præmonere*, and ſo do diverſe Interpreters of the Civil and Canon Law uſe it; for they are Præmuniti that are Præmoniti. Co. Litt. 129. b. S. P. 3 Inſt. 120.

2. 29 E. 3. B. R. Rot. 19. **The Biſhop of Hereford indicted in a Premunire** for excommunicating all, qui in Boſcis, Parcis, Chaceis & Warennis ſuis apud Malvern & alibi in Dioceſi ſua fugaverunt & **feras de Boſcis ſuis ac Lepores, Cuniculos & Phaſianos de Waren. ſuis ceperunt, generaliter per totam Dioceſim ſuam fulminavit contra Jus Regni &c. and found Guilty by Jury, but adviſed of the Judgment. (It ſeems that this Indictment was not upon any Statute, for it ſeems 27 E. 3. does not extend to it, not being done to the King, nor after Judgment at the Common Law.**

A. is *ſued in the Spiritual Court for Maintaining* that it is lawful for Secular Judges to convene before them and proceed againſt Clerks for

Offences againſt the Peace; and *that the Exemption of the Clergy from the Secular Juriſdiction is not founded upon the Law of God*: The Promoter and Abettors of the Suit incur a Premunire, and ſo do the Judges of the Spiritual Court who retain the Cauſe; by all the Judges of England. Jenk. 198. pl. 10. cites 7 H. 8.

3. Rot. Parl. 20. E. 3. N. 41, 42. **The Commons pray that if any** bring the Bull or Letter of the Pope, touching the Buſineſs of Alien Biſhops, Abbots &c. **that he be out of the Law. Anſwer, Be it forbid, that none bring Letters of Aliens from over the Sea into the Realm, if he does not ſhew them to the Chancellor or the Warden of the Ports, upon Pain of 500 l. Forfeiture to the King.**

He who *brought Writ of Excommunication into England* in the Time of E. 1. *abjured the Realm*,

and the King would have had him drawn and hanged; but the Chancellor and Treaſurer fell upon their Knees for him before the King, by which he forejured the Realm only. And ſo ſee the Puniſhment thereof before any Statute of Premunire; quod nota bene. Br. Premunire, pl. 10. cites 30 Aſſ. 19.

4. *At* the *Common Law before* the Statute 5 *Eliz. cap.* 1. *it was no Felony to kill a Man attainted of Premunire*; for he was out of the King's Pro-

S. P. Hawk. Pl. C. 55. cap. 19 S. 26 —S. P. Co. Litt. 131. b.

Protection, and every Man might do with him as with an Enemy of the King. Jenk. 199. pl. 17. cites 24 H. 8.

(P. a. 2) Premunire *by Statute.*

1. ATtachment upon a Prohibition was brought by the King and the Incumbent, for that the *King had preſented the Incumbent* to a Benefice, *and the other Defendant brought Bulls from Rome in Diſturbance thereof*, contra formam Statuti &c. And the Defendant confeſs'd it; by which the *Court awarded* that the *Defendant* ſhall go *to perpetual Priſon, and that the Plaintiff recover his Damages*, as he has counted; and the Court would not tax the Damages in this Caſe. And ſo it ſeems that this *Action was brought* by the Incumbent *qui tam* pro Domino Rege quam pro ſeipſo ſequitur. Br. Præmunire, pl. 7. cites 21 E. 3. 40.

The Uſurpations of the Biſhops of Rome were the Cauſe of making this and all other Statutes of Premunire. Arg. Mod. 60.——Before the making of this Statute there were *three* great *Miſchiefs*. 1. That the King's Subjects have been *drawn*

2. 27 *E.* 3. *Stat.* 1. *cap.* 1. *Whereas divers People are drawn out of the Realm to anſwer Things, the Cognizance whereof belongeth to the King's Court, and the Judgments given in the King's Court are impeached in another Court, in Prejudice and Diſheriſon of the King, his Crown and People, and to the Deſtruction of the Common Law of this Realm, it is aſſented and accorded by the King, the great Men and Commons, that whoſoever ſhall draw any out of the Realm in Plea whereof the Cognizance belongeth to the King's Court, or in Matters where Judgment hath been given in the King's Court, And whoever ſhall ſue in any* * other Court, *to defeat or impeach the Judgments given in the King's Court, ſhall be ſummoned to appear before the King and his* † *Council, or in his Chancery &c. to anſwer ſuch Contempt within two Months; and if they ſhall not* ‡ *appear in Perſon at the Day, to be at the Law, they ſhall be put* || *out of the King's Protection, with their* ¶ *Procurators, Attornies, Executors, Notaries and Maintainers, and their* ** *Lands, Goods and Chattels forfeited to the King, and their* †† *Bodies be impriſoned and ranſomed at the King's Will; and if they cannot be found, they ſhall be outlawed.*

out of the Realm to anſwer Things whereof the Conuſance belonged to the King's Court. 2. Of Things *whereof Judgments have been given in the King's Courts.* 3. That *after Judgments* given *in the King's Courts of Common Law*, of Matters determinable by the Common Law, *Suits were commenced in other Courts within this Realm*, to defeat or impeach thoſe Judgments. And theſe three Miſchiefs had three unſufferable Effects. 1. The Prejudice and Diſheriſon of the King and of his Crown. 2. The Diſheriſon of all his Subjects. And 3. The Undoing and Deſtruction of the Common Law of this Realm. All which appears in the Preamble of this Act. 3 Inſt. 120.

* They are called (*other Courts*) either becauſe they *proceed by the Rules of other Laws, as by the Canon or Civil Law* &c. or by other Trials than the Common Law doth warrant; for the Trial warranted by the Law of England, for Matters of Fact, is by Verdict of twelve Men before the Judges of the Common Law, of Matters pertaining to the Common Law, and not upon Examination of Witneſſes in any Court of Equity; ſo as *Alia Curia* is either that which is governed per Aliam Legem, or which draweth the Party Ad aliud Examen: For if the Freehold and Inheritances, Goods and Chattels, Debt and Duties wherein the King or Subject hath Right or Property by Common Law, ſhould be judged per Aliam Legem, or be drawn Ad aliud Examen, the three Miſchiefs aforeſaid, expreſs'd in the Preamble and in this Act, ſhould follow, viz. Diſheriſon of the King and his Crown, the Diſheriſon of all his People, and the Undoing and Deſtruction of the Common Law at all Times uſed: By which Words of the Act it appeareth, that all theſe Miſchiefs were againſt the ancient Common Laws at all Times uſed. 3 Inſt. 120.

† Here Council cannot be taken, as moſt commonly it is, for his Judges of his Courts of Juſtice, who are ſaid to be of his Council for Proceedings in Courſe of Juſtice, becauſe the Courts of Juſtice are hereafter is this Act named; neither doth it *intend* the King's Privy Council, but *the King and the Lords of Parliament in Parliament*, which is a Court of Juſtice. 3 Inſt. 125.

‡ *Premunire againſt an Abbot* who was *a Lord of Parliament*; and therefore he prayed to be by Attorney, and could not, becauſe the Statute is contrary; but by ſpecial Writ out of Chancery he may. Br. Attorney, pl. 48. cites 15 H. 7. 9. ——*So* of the *Praying to be received*, this may be by Special Writ out of the Chancery. Ibid.

|| By theſe Words the Perſons attainted in a Writ of Premunire are *diſabled to have any Action or Remedy by the King's Law*, or the King's Writs; for the Law and the King's Writs are the Things whereby a Man is protected and aided, ſo as he, that is out of the King's Protection, is out of the Protection

tection and Aid of the Law. 3 Inſt. 126.——S P. And no one, knowing him Guilty, can with Safety give him Aid, Comfort and Relief. Hawk. Pl. C. 55. cap. 19. S. 47.

¶ Note, by this Act the *Procurers, Attornies, Executors, Notaries and Maintainers* ſhall have the ſame Puniſhment that the Principal ſhall have. 3 Inſt. 125.

** See (P. a. 6)——This is a new Kind of Forfeiture given by this Act, and is penal, and cannot by Equity extend further than the Records; and therefore this Act extendeth not to the Forfeiture of Fairs, Markets, Rent-charges, Rent-ſeck, Warrens, Annuities, or any other Hereditament that is not within the Word [Lands.] 3 Inſt. 126.

†† The Greatneſs of the Puniſhment ſhews the Greatneſs of the Offence. 3 Inſt. 126.

Provided, that if they come in before they be Outlawed, and yield themſelves to Priſon to be juſtified by the Law, and ſubmit to the Judgment of the Court, they ſhall be received.

3. If a Man *leaſes his Vicarage for Life rendering Rent,* and *ſues in the Eccleſiaſtical Court for the Rent,* Premunire lies; by which he tendered orher Iſſue; for now the Rent reſerved is a Lay Thing. Br. Premunire, pl. 5. cites 44 E. 3. 36.

4. 16 *R.* 2. *cap.* 5. Enacts that * *if any purchaſe or proſecute, or cauſe to be purchaſed or proſecuted in the* † *Court of Rome or elſewhere,* ‡ *any Thing which touches the King, againſt him, his Crown and his Regality, or his Realm, they, their* || *Notaries, Procurators, Maintainers, Abetters, Fautors and Counſellors, ſhall be put out of the King's Protection &c.*

* Theſe Words *extend to all Perſons* of what Quality or Sex ſoever. 3 Inſt. 126.

† Theſe Words *extend to all Courts* of what Juriſdiction ſoever, and whether holden by Right or Wrong. 3 Inſt. 126.——It is intended in the *Biſhop's Court*; and therefore if a Man be Excommunicated for a *Thing which belongs to the Common Law,* Premunire lies. Br. Premunire, pl. 12 cites 5 E. 4. 6.——It has been ſaid that *Suits in the Admiralty or Eccleſiaſtical Courts* within the Realm are within this Statute by Force of theſe Words (*Or elſewhere*) if they concern Matters, the Conuſance whereof belongs to the Common Law; As where a Biſhop deprives an Incumbent of a Donative, or excommunicates a Man for Hunting in his Parks &c or where Commiſſioners of Sewers impriſon a Man for not releaſing a Judgment at Law. Hawk. Pl. C. 51. cap. 19. S. 18.——But it ſeems that a Suit in thoſe Courts for a *Matter which appears not* by the Libel it ſelf, *but only by* the Defendant's Plea, or other *Matter ſubſequent, to be of Temporal Conuſance,* (*as* where a Plaintiff *libels for Tithes,* and the *Defendant pleads* that they were *ſever'd* from the nine Parts, by which they became a Lay Fee) is not within the Statute, becauſe it *appears not that either the Plaintiff or the Judge knew that they were ſevered.* Hawk. Pl. C. 51. cap. 19. S. 19.——See (P. a. 7).

‡ Theſe Words extend to All Things whatſoever, and are as general as can be. 3 Inſt. 126.

|| This Act *extends* not only to Procurers, Abettors, Maintainers, Counſellors &c. which are known Words in Law, but *to Favourers* (Fautores) which Word was largely extended in the Time of H. 8. whereby it is to be obſerved how dangerous it is to bring new Words into an Act of Parliament, eſpecially into ſuch as be ſo penn'd; for there it appears that Cliff, being a Parſon of a Church, granted to the Cardinal an Annuity ſo long as he ſhould be Legate, Ut decentius & ſublimius ſe gereret in Authoritate ſua Legantina, which the Cardinal had by Bull, and paid to him 10 Marks in Name of Seiſin; and he was adjudged a Fautor. 3 Inſt. 126. cites Mich. 21 H. 8. Cliff's Caſe.

5. The *refuſing to elect or conſecrate* the Perſon nominated by the King *to a Biſhoprick* is made a Premunire by 25 H. 8. cap. 28. Hawk. Pl. C. 52. cap. 19. S. 22.

6. The exerciſing the Juriſdiction of a *Suffragan* without the Appointment of the Biſhop of the Dioceſe, is made Premunire by 26 H. 8. cap. 14. Hawk. Pl. C. 52. cap. 19. S. 21.

7. 5 *Eliz. cap.* 1. Enacts that *if any Subject of this Realm, after the 1ſt of April* 1563. *ſhall by Writing, Cyphering, Printing, Preaching or Teaching, Deed or Act, adviſedly and wittingly hold, or ſtand with to extol, ſet forth, maintain or defend the Authority, Juriſdiction or Power claimed or uſurped by the Biſhop or See of* Rome *within this Realm, or wittingly attribute any ſuch Juriſdiction, Authority or Prehemінence to the ſaid Biſhop or See of* Rome, *ſuch Offenders, their Abettors, Procurers and Counſellors, Aiders, Aſſiſters and Comforters, being indicted or preſented within one Year after ſuch Offence, and convicted or attainted at any Time after, ſhall incur a* Premunire.

Till this Statute any one might have *killed* a Perſon attainted of Premunire. Jenk. 199. pl. 15. cites 24 H. 8. Br. Caſes 53.——Per Coke Ch. J. 2 Bulſt. 299.——

12 Rep. 38. the Caſe of Premunire.——The Statutes 27 *E.* 3. 1. 16 *R.* 2. 5. *&c* of Premunire *are yet in Force,* and all ſuch Proceedings by Colour of Eccleſiaſtical Law, before any Eccleſiaſtical Judges who

who were in Danger of Premunire before this Act of 1 *Eliz.* are now in Caſe of Premunire after the ſaid Act, be it before Commiſſioners by Force of High Commiſſion, or before Biſhops or other Eccleſiaſtical Judges; for the ſaid Acts of Premunire are not repealed by this Act. Reſolved. 12 Rep. 37. Caſe of Premunire.

8. The 5 Eliz. cap. 1. Prohibits *Books* to be publiſhed or printed, or uttered within the Kingdom, which *maintain the Supremacy of the Pope* within the King's Dominions. The Approvers of ſuch Books are within the ſaid Statute, and the Danger of it, viz. Premunire. By all the Judges of England. Jenk. 235. pl. 12. cites 11 Eliz. Dyer 282.

9. A. was indicted upon the Statute of 1 Eliz. cap. 1. for *aiding B. knowing him to be a principal Maintainer of the Authority of the See of Rome*, (the Offender in ſuch Caſe is liable by the ſaid Statute to the Forfeiture of Premunire. There are other Offences mentioned in the ſaid Statute, with other Penalties;) this Offence in the ſaid Statute has the Words, (*Upon Purpoſe and to the Intent to extol the Power of that See*;) theſe Words were *omitted in the* ſaid *Indictment*, for which Cauſe the ſaid Indictment was judged inſufficient by all the Judges of England; for theſe Words make the Offence as to the Forfeiture of Premunire. Jenk. 243. pl. 27. cites 20 Eliz. D. 363.

10. The contributing to the *Relief of a Popiſh Seminary* is made a Premunire by 27 Eliz. 2. Par. 6. Hawk. Pl. C. 52. cap. 19. S. 26.

11. 16 *Car.* 1. *cap.* 21. Enacts, that *if any Perſon ſhall put in Execution any Letters Patents, Proclamation &c. whereby the Importation of Gunpowder, Saltpetre, Brimſtone, or other Materials for the making of Gunpowder, ſhall be any ways prohibited or reſtrained, he ſhall incur a Præmunire.*

1 Vent. 171. S. C. by Name of the King v. Green & al.

12. Green and others were indicted for *refuſing the Oath of Allegiance* contained in the Act 3 Jac. cap. 4. and being convicted, Judgment of Premunire was given againſt them according to the Directions of the ſaid Statute. Raym. 212. Mich. 23 Car. 2. B. R. Green's Caſe.

(P. a. 3) Premunire. *Notes.* And *for whom it lies.*

S. P. Hawk. Pl. C. 388. cap. 37. S. 26.

1. PRemunire *is but a Contempt*; and a *Pardon* of all Contempts pardons it. 12 Rep. 92. Paſch. 10 Jac. in Lord Vaux's Caſe.

By the Statute 27 E. 3. it appears that a Premunire lies *as well for the Party as for the King*, and they both may join in one Writ. 3 Inſt. 125 ——— Br. Action Popular, pl. 9. cites S. C.

2. The King ſhall have Premunire, and the *Party grieved* by the Suit of the Proviſion may *have Action*. Per Littleton. Quære what Action he ſhall have; it ſeems Action *upon the Caſe*; but none can have Premunire but the King, as it ſeems. Quære. Br. Premunire, pl. 13. cites 7 E. 4. 2.

3. The *Biſhop of Durham* has Jura Regalia there, and therefore may hold Plea of Premunire; quere, for it is given by Statute, and there was no ſuch Suit at Common Law. Br. Premunire, pl. 15. cites 14 H. 4. 14. and 9 E. 4. 2.

Serjeant Hawkins ſays it has been queſtioned, whether a Man attainted of Premunire has a *Right to Surety of the Peace*, or not. Hawk. Pl. C. 126. cap. 60. S. 3.

4. A Man attainted in a Premunire is diſabled to *bring any Action*; for he is extra Legem poſitus, and is accounted in Law Civiliter mortuus. Co. Litt. 130. a.

5. Upon

5. Upon an Indictment of Premunire, a *Peer* of the Realm ſhall *not be tried by his Peers.* 12 Rep. 92. Lord Vaux's Caſe.

(P. a. 4) Premunire. *In what Caſes it lies, or a Prohibition.*

1. SOME hold that a Benefice donative by the Patron only *is a Lyy Thing*, and the *Biſhop ſhall not viſit*, and therefore ſhall not deprive; and then *if he meddles in it, he is in the Caſe of Præmunire.* Br. Premunire, pl. 21. cites 8 Aſſ. 29.

And in this Caſe was *Barloo, Biſhop of Bath* in the Time of E. 6. and was compell'd to obtain a Pardon, inaſmuch as he had deprived the Dean of Wells, which was a Donative by Letters Patents of the King, by Act of Parliament therefore made. But S E. 3. above is not adjudged. Ibid.——* S. C. cited 3 Inſt. 122.

2. Prohibition lies always where Premunire does not lie; as *of Tithes of great Trees*, or *for Tithes of the ſeventh Part* Prohibition lies, and not Premunire; for the *Nature of the Action* belongs to the Spiritual Court, but *not the Cauſe* in this Form. Br. Premunire, pl. 16. cites 24 H. 8.

But where it is *of* a *Laything*, or of a Thing which never belonged to the Spiritual Court, Premunire lies thereof; as of *Debt againſt Executors upon a Simple Contract*, or for Breach of Faith upon a Promiſe to pay 10 l. by ſuch a Day. Br. Premunire, pl. 16. cites 24 H. 8. and Doct. & Stud. lib. 2. cap. 24.

3. Saint Germin in his Book of Doctor and Student, who wrote after 26 H 8. holdeth, That if a Man makes a *Promiſe for a temporal Thing, and ſwears to perform it*, and does it not, if he be ſued for Perjury in the Spiritual Court, a Prohibition or a Premunire lies in that Caſe. Alſo he ſays, if a Man be *excommunicate* in the Spiritual Court *for Treſpaſs*, or ſuch other Thing as belongs to the King's Crown and his Royal Dignity &c. the Party, if he will, may have a Premunire fac. againſt him. 3 Inſt. 122.

4. In all Caſes, when the *Cauſe originally belongs to the* Cognizance of the *Eccleſiaſtical Court, and the Suit is proſecuted there in the ſame Nature, as the Cognizance belongs to them (tho' in Truth* the Cauſe, all Circumſtances being diſcloſed, *belongs to the Court of the King*, and to be determined by the Common Law) yet no Premunire lies in that Caſe, but a Prohibition; *as* if *Tithes ſevered* from the nine Parts, *are carried away*, if the Parſon ſues for the *Subſtraction* of theſe Tithes in the Spiritual Court, this is not in the Caſe of Premunire; for it may be that the Plaintiff did not know of the Severance, nor that they were carried away, nor may the Eccleſiaſtical Judge know it; and tho' the Defendant pleads this, yet the Eccleſiaſtical Court may proceed to try the Truth of it without Danger. And *ſo* in Caſe of *Sylva Cædua*, tho' the Wood perhaps may be *above 20 Years Growth.* 12 Rep. 39. the Caſe of Premunire.

But tho' the Cauſe may originally belong to the Eccleſiaſtical Court, *yet if he ſues for it in the Nature of a Suit which doth not belong to that Court, but to the Common Law*, a Premunire lies; *as if a Mortuary be delivered to the Parſon*, and after the *Party retakes it*, if the *Parſon ſues for this as a Mortuary and carried away*, (and ſo of Tithes ſevered) he is in Caſe of Premunire. *But after the Retaking, if he ſues for it as a Mortuary not executed in Nature of a Suit which belongs to the Eccleſiaſtical Court*, upon the Truth of the Caſe there is Cauſe of Prohibition, and no Premunire lies: *So* if he ſues for *Tithes of Wood above 20 Years* Growth, ſo that it *appears by the Libel that the Cauſe does not belong to the Eccleſiaſtical Court*, the Premunire lies; *But* if the Suit be *Pro Sylva Cædua* &c. ſo that as the Suit is framed, the Cognizance belongs to the Eccleſiaſtical Court, tho' the Truth be otherwiſe, a Prohibition lies, and no Premunire 12 Rep. 39. Caſe of Premunire.——For *when* the Cauſe *originally belongs* to the Eccleſiaſtical Court, *tho' it holds Plea of any Incident* to it, *which belongs to the Common Law*, a Prohibition lies, and not a Premunire. 12 Rep. 39. 40. Caſe of Premunire.

5. When

5. When the *Cauſe originally belongs to* the Cognizance of *the Common Law and not to the Eccleſiaſtical Court*, there, *tho' they libel* for it *according to the Courſe of the Eccleſiaſtical Law*, yet the Premunire lies, becauſe it draws the Cauſe Ad aliud Examen, and ſo deprives the Subject of the Benefit of the Common Law, which is his Birth-right. 12 Rep. 40. Caſe of Premunire.

Sid 463. S C. Mod. 59 to 61. S. C. Adjournatur.

6. Action upon the Statute 27 E. 3. of Premunire, and declared that Paſch. 18 Car. 2. he *recovered* 200 *l. Debt againſt the Defendant in B. R.* and that after the *Defendant exhibited his Bill in Chancery*, and obtained a *Decree for the Vacating of the Judgment.* The Defendant demurr'd. This Caſe depended from Trin. 20 to Trin. 22 Car. 2. when Hale Ch. J. held, that this Caſe was not within the Statute, and ſo he ſaid it appeared by the Petition upon which the Statute was founded. And no more was done thereupon. Lev. 24 to 243. Trin. 20 & 22 Car. 2. B. R. King v. Standiſh.

See Amercement. (C. a)

(P. a. 5) Premunire. *Proceedings, Pleadings and Judgment.*

* See pl. 9. and in Notis there.——† S. P. For it ſhall be *intended that it is well ſerved according to Law*; for other Writs ought to be ſerved 15 Days before the Return, and yet no Mention thereof is in the Return; and if the Sheriff does not warn him, or ſerve the Writ as he ought, if the Party be damnified, he may have Writ of Diſceit. Br. Retorn de Brief, pl. 56. cites S. C.

1. IN Premunire, the Defendant *appeared by* * *Attorney*, and becauſe he did not come in Perſon, he was condemned, and the *Sheriff returned the Writ*, prout Breve exigit &c. † *and did not make Mention that he warned him by two Months* according to the Statutes, and yet well; quod nota. Br. Premunire, pl. 18. cites 39 E. 3. 7.

Br. Premunire, pl. 2. cites 42 E. 3. 7. Contra, That where the *Sheriff returned the Defendant warned* and returned *No Day*; and therefore ill, becauſe by the *Statute they ſhall be warned two Months before the Day of the Return*, which cannot be counted where no Day of Garniſhment is returned, for which Reaſon Sicut alias iſſued. Br. Retorn de Brief, pl. 105. cites S. C.

If the *Defendant come not at the Day* &c. by the expreſs Letter of the Law Judgment ſhall be given againſt him, according to the Act 27 E. 3. 3 Inſt. 125.

2. In Premunire the Defendant was *reaſonably warned* according to the Statute, and did not come; by which it was adjudged that he ſhall be put out of Protection &c. Br. Premunire, pl. 3. cites 43 E. 3 6.

And there it was admitted, that the *Judgment by their Default, that they ſhall be out of the King's Protection, is no Attainder*; for Thorp Ch. J ſaid it is only a Pain given by the Statute, that if they do not come the firſt Day they ſhall be out of the Protection of the King, and their Lands and Chattels forfeited: But this is no Attainder, *for Capias ſhall iſſue* againſt them; *and if they do not appear at the Capias, Exigent ſhall iſſue*; and ſo the Statute proves that they have Anſwer; for otherwiſe it ſhall be in vain to award Proceſs; quod nota. Ibid.

3. Premunire *againſt divers, ſome as Principal and ſome as Acceſſaries*; and at the Day of Return the *Principal did not come*, by which they were out of the Protection of the King, and their Lands and Chattels forfeited; and the Plaintiff prayed that *the Acceſſaries* who appeared ſhould anſwer: But per Fencote, they *ſhall not anſwer till the Principal be attainted*. Br. Premunire, pl. 4. cites 44 E. 3. 7.

4. And ſeveral admitted there, that *there may be Principal and Acceſſary in Premunire*; *but* Candiſh ſaid that *if* he who is called *Principal dies*, yet *the other ſhall anſwer:* Contra in Felony; but Finch ſaid that *it is more like to Treſpaſs than to Felony*; for in Treſpaſs he who firſt comes ſhall anſwer, and if he be convicted of Damages, and after another comes and pleads, and is convicted, he ſhall be charged of the firſt Damages:

Damages; and if he be acquitted, yet the firſt ſhall be charged; and the Writ was that ſuch Manutenentes & Abettatores ipſum expulerunt: And after Finch awarded, that the Defendants who appeared ſhould anſwer; and ſo *it ſeems that all are Principals.* Br. Premunire, pl. 4. cites 44 E. 3. 7.

5. Premunire by an Abbot *againſt two*; the *one made Default*, and was *put out of Protection* of the King, *and his Goods* and Chattels *forfeited*; and this *at the firſt Day* as it ſeems. Rolſe defended the Tort and Force, and demanded Judgment if the Court would take Conuſance; for he *ſaid that the Abbot Plaintiff was depoſed at C. in the County of Cheſter, where this Court has no Juriſdiction.* Chauntrell ſaid, this goes to the Action. Per Strange, At leaſt it goes to the Writ, but if you agree to the Iſſue, it ſhall be tried where the Writ is brought, by the Statute &c. of 9 E. 3. cap. 4. as it ſeems. And after Roll paſs'd over, and pleaded Excommunication. Brooke makes a Quære, if the foreign Plea above ſhall be tried where the Writ is brought, where it goes to the Writ; for the Statute mentions where it is pleaded in Bar. Br. Premunire, pl. 8. cites 8 H. 6. 3.

6. Bill of Premunire for the King was *brought* againſt J. N. *in B. R.* and he pleaded to the Bill, becauſe *the Statute is that ſuch Suit ſhall be by Bill before the King and his Council, or by Premunire*, which Bill before the King and his Council, is *intended before him and his Lords, and not before him in his Bench*; and *Premunire is intended by Writ Original*, and not by Bill in B. R. wherefore Plaintiff made Bill of Premunire againſt him in Cuſtody of the Marſhal, and then he was committed to anſwer. Br. Premunire, pl. 1. cites 27 H. 6. 5.

Br. Bill. pl. 1. cites S. C. ——But in Anno 22 H. 8. it was common that ſeveral Clerks were compell'd to anſwer to the Bills of Premunire in B. R. who were not in Cuſtody of the Marſhal; quod nota. Ibid.

7. Premunire *againſt three, one as Procurator, another as Counſellor*, and the *third as Attorney*; the *Damages ſhall be ſevered.* Per three Juſtices. Br. Premunire, pl. 17. cites 36 H. 6. 29.

The Defendant may *chuſe*, whether he will *make them all Principals*, or the *one Principal and the others Acceſſaries*; but the Damages ſhall be ſeverally tax'd. 3 Inſt. 125.

8. Premunire *againſt four*; *two appeared* and *two not*; and the Writ was abated for Default therein; and therefore no Judgment was given againſt the two who made Default, inaſmuch as the Writ was ill and abated. Br. Premunire, pl. 11. cites 5 E. 4. 6.

9. In Premunire the *Defendant appeared, and took Exception*; and the Court for divers Conſiderations permitted him to make Attorney. Br. Attorney, pl. 53. cites 9 E. 4. 2.

A Man ſhall *not make Attorney* in Premunire, *unleſs in ſpecial Caſe.* Br. Attorney, pl. 82.——S. P. Br. Attorney, pl. 104. cites 39 E. 3. 7.——Defendant cannot *appear* by Attorney, but *in Perſon* in this Suit, tho' he be a Lord of Parliament, unleſs by ſpecial Writ of the Chancery. Br. Premunire, pl. 15. cites 15 H. 7. 9.——S. P. And this by the Statute 38 E. 3. cap. 2. 3 Inſt. 125.——S. P. Whether the Defendant be a *Peer* or Commoner. It is ſaid indeed in Roll's Reports, That Sir Anthony Mildmay was ſuffered to *plead a Pardon to a Premunire by Attorney*, and no Mention is made of any ſuch Writ or Grant; but Serjeant Hawkins ſays he preſumes there was a Clauſe to this Effect in the Pardon. 2 Hawk. Pl. C. 273. cap. 26. S. 53.

10. In Premunire a Man may have Proceſs *by Proclamation only, and* may have *Exigent if he will.* Br. Proceſs, pl. 80. cites 9 E. 4. 2.

11. A Man brought * *Bill againſt J. N. in Cuſtody of the Marſhal*, and *counted upon the Premunire, that he had ſued the Plaintiff in the Arches for Goods of J. S. and had appealed to Rome*; and it lies well by Bill without Original; for this is to give him Day in Court, and *when he is in Cuſtody of the Marſhal he is always in Court*; quod nota per Cur.

Br Parliament, pl. 94 cites S. C.—Br. Action ſur le Statute, pl. 37.

cites S.C.— * This Suit need not be againſt them by *Original Writ*; but if the Defendant be *in Cuſtodia Mareſchalli*, the Suit may be againſt him *by Bill*, becauſe the End of the

But where the Statute gives the Proceſs or Form of the Original, there this ſhall be only obſerved; upon which the Defendant ſaid that he ſued in the Spiritual Court as Executor of J. S. to have the Will proved, where the Plaintiff claimed alſo to be Executor by another Will, and had Citation thereof, abſque hoc that he is guilty in other Manner. And per Huſſey and Fairfax, This is no Plea, and therefore nothing ſhall be entered but Not Guilty; for the Plea does not anſwer any Thing to the Suit of the Goods. And ſo ſee that *Not Guilty* is a good Plea in this Action, and that *Executors cannot ſue for the Goods of the Teſtator in the Spiritual Court*, but at Common Law. Br. Premunire, pl. 12. cites 2 R. 3. 17.

giving of the two Months was, that they ſhould have Notice, which is ſatisfied; and therewith agrees the Precedents; and the Defendant cannot be ſued in any other Court when they are in Cuſtodia Mareſchalli. See the Statute of 18 Eliz. cap. 5. but that Statute extends to common Informers, and not when the Suit is commenced by the Party grieved. 3 Inſt. 125.——*But if the Defendant appears and pleads*, and the Iſſue be *found againſt him*, or if he demur in Law &c. *Judgment* ſhall be given againſt him, *that he ſhall be out of Protection* &c. And ſo has the Statute 27 E. 3. been interpreted; and Judgment given accordingly. 3 Inſt. 125.

S. P. If he be in Priſon; *but if* the Defendant be *condemned upon*

12. The Judgment in Premunire is, *That the Defendant ſhall be* from thenceforth *out of the King's Protection*, and his *Lands* and Tenements, Goods *and Chattels forfeited* to the King, and that his *Body* ſhall *remain in Priſon at the King's Pleaſure*. Co. Litt. 131. b.

his Default in not appearing, whether at the Suit of the King or the Party, the *ſame Judgment* ſhall be given as to the being out of the King's Protection, *and the Forfeiture*; but inſtead of the Clauſe that the Body ſhall remain in Priſon, there ſhall be an Award of a *Capiatur*. 2 Hawk. Pl. C. 445. cap. 48. S. 9.

3 Le. 139. pl. 189. Mich. 28 Eliz. B. R. S R. by Name of Parret v. Dr. Matthews.

13. The Attorney-General proſecuted a Premunire for the Queen and P. againſt Doctor M. and others, becauſe they procured the ſaid P. to be *ſued in the City of Oxford before the Commiſſary* there *in an Action of Treſpaſs by Libel according to the Eccleſiaſtical Law, in which Suit P. pleaded Son Franktenement*, and ſo to the Juriſdiction of the Court, *and yet they proceeded*, and P. was condemned and impriſoned. And after that Suit depended, the Queen's Attorney withdrew the Suit for the Queen; and it was moved if, notwithſtanding that, the Party grieved might proceed. But it was held by the whole Court, That *if the King's Attorney will not further proſecute*, the *Party grieved cannot* maintain this Suit; for the principal Matter in the Premunire is the Conviction, and the putting of the Party out of the Protection of the King, and the *Damages are but acceſſary*, and then the Principal being releaſed the Damages are gone. Le. 292. pl. 399. Mich. 26 & 27 Eliz. B. R. The Queen v. The Dean of Chriſtchurch.

14. The King brought a Prohibition againſt the Prior of W. that where the *King* had *recovered in Quare Impedit*, the *Defendant ſent his Frere to Rome with an Appeal*, and ſued there to avoid the Judgment, according to the Statute of Premunire. And upon Not Guilty pleaded, all this was found againſt the Defendant; and Judgment was prayed for the King upon the Statute of 27 E. 3. c. 1. in Caſe of Premunire; and it was adjudged that he ſhall not have it, becauſe the *Judgment ought to be conformable to the Original*, and this Suit was not taken according to the Statute, but by a Writ of Prohibition at the Common Law. 9 Rep. 74. a. Trin. 9 Jac. in Doctor Huſſey's Caſe, cited as 30 E. 3. 11. b. The King v. the Prior of Woburne.

The Reporter adds, Nota, for the ſame Fault ſuch a Judgment in Premunire againſt one

15. Error to reverſe a Judgment in Premunire given by the Juſtices of Aſſiſe and Gaol-Delivery in the County of Somerſet againſt Perin, for *refuſing to take the Oath of Obedience* mentioned in the Statute 3 Jac. cap. 3. Perin pleaded Not Guilty to the Indictment, and the *Iſſue was joined* between him and the Clerk of Aſſizes, and the *Award of the Venire facias* was *certified* upon the Record thus, viz. *Super quo precept. fuit Vic.*

Vic. Com. Somers. præd. *quod Venire faciat* &c. where it ought to be *Præcept. eſt*, and *not* Præceptum *fuit*, in the Preterperfect Tenſe; for it is rather a Hiſtory of a Matter which was acted before the Iſſue join'd, than the Record of the Court of an Act done by the Court in Præſenti, which always ought to be recorded in the Preſent Tenſe; and for this Error the Judgment was reverſed, and the Party reſtored. 2 Sand. 393. Mich. 23 Car. 2. The King v. Perin.

Dixon was reverſed. Trin. ult. Ibid.— S. P. Vent. 172. Mich. 23 Car. 2. B R. The King v. Green & al.

16. The Defendants were indicted for *refuſing the Oaths* of Obedience enjoined by 3 Jac. cap. 4. And the *Indictment* was, *That at the Aſſizes and General Gaol-Delivery held before Sir R. A.* &c. *and Z. B. Gent. eidem R. A. and T. L. hac vice Aſſociat. per Sacramentum ſuum* &c. *præſentat. exiſtit modo ſequen.* viz. *Jur. præſentant quod*, at the General Quarter-Seſſions for the County of Hereford 14 January Anno 30. *the Juſtices of Peace did tender* the ſaid Oath to the Defendants, and they refuſed; *and afterwards ad Aſſiſas tent. pro Com. Hereford prædict. apud Hereford prædict. in Com. Hereford præd.* 31 Martii 31 Car. 2. *Coram Roberto Atkins Milite Balnei un Juſtic. dicti Domini Regis de Banco, & Z. B. Gen. eidem R. A. & T. L. Mil. un. Baron. Scaccarii dicti Domini Regis ad Aſſiſas in Com. Hereford præd. capiend. aſſign.* per formam Statut. *the ſaid Juſtices A. and Z. B. again tendered the ſaid Oath, and they refuſed* to take the ſame. *And upon Not Guilty pleaded, the Defendants Relicta Verificatione confeſs the Judgment*; and Judgment was given againſt them: And upon a Writ of *Error*, the Error *aſſign'd* was, *that the ſecond Tender* of the Oath *was by the Juſtices of Aſſiſe only*; whereas the *Statute* 3 *Jac. ſays it* muſt be *by Juſtices of Aſſiſe and Gaol-Delivery*; and this ſeemed not to be allowed by Dolben, but by the other two it was not ſpoke to; but Raymond conceived 'twas Error, and that the Juſtices of Aſſiſe cannot by Virtue of that Commiſſion barely tender the ſaid Oath; for the *Statute ſays*, that *in Caſe they refuſe to take the ſaid Oath tender'd them by the Juſtices of Peace*, then *the ſaid Juſtices ſhall and may commit the ſame Perſons to the Common Gaol, there to remain* without Bail or Mainprize *until the next Aſſiſes, where the ſaid Oath ſhall be again in the ſaid open Aſſiſes required of them by the ſaid Juſtices of Aſſiſe and Gaol-Delivery in their open Aſſiſes*; and every Perſon ſo refuſing ſhall incur the Danger and Penalty of a Premunire, by which it appears that they being committed to Gaol by Judgment of the Juſtices of Peace, none can deliver them but they who have Power to deliver the Gaol; and tho' the Statute de Finibus 27 E. 1. gives Juſtices of Aſſiſe Power to deliver the Gaol, that is intended only of Felons, as appears by Staunf. Pl. Cor. 57 & 58. But the Judgment was reverſed for an *incurable Error*, which *was* the *miſreciting of the Oath contained in the Act.* Raym. 374. 375. Trin. 32 Car. 2. B. R. The King v. Mounſon.

(P. a. 6) Premunire. *Forfeiture of what, and by whom.*

1. PRemunire *againſt ſeveral* upon the Statute 27 E 3. cap. 1. They were *found Guilty, the one as Principal and the others as Acceſſaries*, and the Damages were ſevered; And per Hals, there may be Principal and Acceſſory in Premunire, and he would have ſevered the Damages; but Gaſcoyne ſaw the Record, which ſuppoſed that they were Coadjutors, Procurors and Abettors to him who made the Bull, by which it was awarded that they recover Damages in common; and the Attorney of the King prayed that they may forfeit their Land and Chattels, becauſe they were attainted as above. Gaſcoyne ſaid *the Statute does not will that he ſhall forfeit his Land* &c. *unleſs for Contumacy* for making Default at the Day of the Premunire returned and ſued, by which

which &c. * But ſee, that there are other Statutes in the Time of R. 2. that they ſhall forfeit Lands and Chattels, if they are attainted, but not by the Statute 27 E. 3. quod nota. Br. Premunire, pl. 6. cites 8 H. 4. 6.

* Br. Forfeitures de Terre, pl. 12. cites 8 H. 4. 7. accordingly.—

S. P. And theſe are *Lands which he had at the Time of the Act done, and after*, if it be upon Verdict, as by Felony or Treaſon. Br. Premunire, pl. 20. cites 8 H. 4. 7. per Gaſcoigne.

2. Richard Fermor of London was attainted in a Premunire in the Time of H. 8. and his *Lands* were forfeited *in Fee*, and not only for Term of Life; quod nota. Br. Forfeiture de Terres, pl. 101. cites 34 H. 8.

Br. Premunire, pl. 19. cites S. C. Brooke ſays, and ſo ſee, that it is not only a Forfeiture for Term of Life, as in an Attaint; for the one is by Statute, and the other is by Common Law.——*But* if *Tenant in Tail* is attainted in a Premunire, he *ſhall forfeit* the Land *but during his Life*; for albeit the Statute of 16 *R.* 2. *cap.* 5. enacts, That their Lands and Tenements, Goods and Chattels ſhall be forfeit to the King, that muſt be underſtood of ſuch an Eſtate as he may lawfully forfeit, and that is during his own Life. And theſe *general Words do not take away the Force of the Statute de Donis* Conditionalibus; but he ſhall forfeit all his Fee-ſimple Lands, Eſtates for Life, Goods and Chattels. And ſo it was reſolved in * Trudgin's Caſe. Co Litt. 130. a.——S. P. But the 26 *H.* 8. has the Words, *All Manner of Inheritance to be forfeited*: The Offence is greater within the 26 H. 8. and the Words more peremptory than in the other. Jenk 287. in pl. 21.——* S. C. cited, as reſolved by all the Judges of England. Paſch. 21 Eliz. 11 Rep. 63. b. in Dr. Foſter's Caſe.——3 Inſt. 126. cites S. C.——Serjeant Hawkins ſays it is agreed, That the Statutes of Premunire, which give a general Forfeiture of all the Lands and Tenements of the Offender, extend not to Lands in Tail. 2 Hawk. Pl. C. 454. cap. 49. S. 28.

3. *He, that procures one to ſue in* the Court Chriſtian, ſhall forfeit as much as he that ſueth, and is Principal as well as the other, and is *in equal Degree of Premunire; but if* they *both be indicted*, the *one of the Act* and the *other of the Procurement*, and *he that is charged with the Procurement is found Guilty, and* the *other by another Inqueſt* is found *Not Guilty*, Judgment ſhall never be given againſt him who was indicted of the Procurement, becauſe he cannot be an Offender but in Reſpect of the Offence of the other. 3 Inſt. 125. 126.

Cro. C. 172. S. C. 4. One Trugion was *ſeiſed in Fee* of Lands, and ſo ſeiſed was indicted of Premunire, and *before his Trial he gave them in Tail*; and afterwards he was attainted of Premunire, and an Office under the Seal of the Exchequer found it; and Queen Elizabeth under the Great Seal granted them to G. C. and this Grant by the Queen was within the Time of the Purview of the Statute *of* 18 *Eliz.* for Confirmation of Grants of the King: and the Queſtion was, *Whether the Attainder in the Premunire ſhall avoid a Grant made by the Party, Meſne between the Indictment and the Trial*, and Judgment thereupon. And this was argued ſeveral Times; but it being a great Point of Doubt and Conſequence, the Juſtices did not give any Opinion or Reſolution. But it was reſolved that the Grant was not good at the Common Law; becauſe upon the Attainder the Eſtate of Franktenement was not diveſted, and veſted in the Queen till an Office thereof found, and *the Office ought to be an Office to intitle*, and not to inform the Queen of the Particulars of the Land; and therefore inaſmuch as it was by Commiſſion under the Seal of the Exchequer, and not the Great Seal, therefore the ſaid Office was inſufficient to intitle the Queen, as it is reſolved in Page's Caſe. 5 Co. Jo. 217. Mich 5 Car. B. R. Groſſe v. Gayne.

(P. a. 7) Premunire. Suing in other Courts. *What ſhall be ſaid* to be *Other Courts.*

1. AFTER Judgment given before Roger Loveday and Walter Winborn, Juſtices of Oyer and Terminer, againſt Walter Biſhop

ſhop of Exeter and his Tenants, the ſaid Biſhop procured the Biſhop of Landaff in the Pariſh Churches of Cornwall and Devonſhire, to pronounce Sentence of *Excommunication* by Sentence of the Archbiſhop of Canterbury, (which Sentence was had by the Procurement of the ſaid Biſhop of Exeter) *againſt all* Perſons of what Eſtate, Degree or Dignity ſoever, *that dealt in the Proceedings &c. againſt the Biſhop and his Tenants before the ſaid Juſtices.* And in this Part of the Record, being in French, it is ſaid, La Corone & la Dignity noſtre Seigniour le Roy ne doit per autre eſtre Juſtice ne guyne &c. Et les choſes que ſont paſſes en ſa court per judgment, ou en auter manner ne devient eſtre en autri court recrecees &c. Out of this Record Lord Coke ſays we may obſerve three Things. 1ſt. What the *Ancient Law* of this Realm was *before the* making the Act 27 *E.* 3. 2dly. That (En autri court) which are the Words of this Act, was taken to be *another Court within the Realm.* 3dly. That the Miſchief before this Act was for Suits in other Courts within this Realm *after Judgment given in the King's Courts.* 3 Inſt. 123. cites 6 E. 1. The Earl of Cornwall's Caſe.

2. J. W. exhibited a Bill of Premunire againſt W. P. upon the Statute of 16 R. 2. for *ſuing in the Admiral Court* before John Earl of Huntingdon, Admiral of England, *for a Cauſe which belonged to the Common Law*, whereunto the Defendant pleaded Not Guilty. 3 Inſt. 121. cites Mich. 9 H. 7. coram Rege.

So R. B. and T. P. and others were charged with the Offence of Premunire, becauſe they *ſued* J. C. *before* Henry Duke of Exeter *Admiral of England, for taking away a Creſs of Gold, and other Goods, ſuppoſing the ſame to be taken ſuper altum Mare, where in Truth they were taken at Stafford* in the County of Eſſex, and the Statute of 16 R. 2. was recited, That none ſhould ſue in Curia Romana ſeu Alibi &c. and that the Conuſance of this Plea belonged to the Common Law, and not to the Court of the Admiral. And *ſo* it is *of the Conſtable and Marſhal*; if they hold Plea of a Matter determinable by the Common Law. 3 Inſt. 121. cites 38 H. 6. coram Rege.

3. A Suit in the *Eccleſiaſtical Court* within the Realm for a Temporal Cauſe was a Cauſe of Premunire. 3 Inſt. 120. cites it as adjudged by the whole Court, Mich. 11 H. 7.

4. In Raſt. pl. 429. b. and 430. there is a Precedent of a Premunire for ſuing in the Eccleſiaſtical Court *for Debt.* 3 Inſt. 121.

5. It was reſolved, That he that ſued in the Eccleſiaſtical Court for the *Forgery of a laſt Will* and Teſtament, incurr'd the Danger of a Premunire; becauſe the Party grieved might have his Remedy by the Common Law. 3 Inſt. 121. cites 17 H. 7.

6. And in the ſame Year of 17 H. 7. Juſtice Spilman alſo reports, that one Turbervile, as well for the King as himſelf, ſued a Premunire againſt a Parſon, for ſuing *for Tithes* in the Eccleſiaſtical Court, *alledging the ſame to be ſevered* from the nine Parts; and Judgment given againſt the Defendant. 3 Inſt. 121.

The Biſhop of Bangor was attainted in a Premunire for *holding Plea of an Advowſon, and of Tithes ſever'd* from the nine Parts. 3 Inſt. 122. cites Trin. 36 H. 8. coram Rege. Rot. 9. The Biſhop of Bangor's Caſe.

7. And the Reaſon of all theſe Caſes is, *becauſe they draw* Matters triable by the Common Law *ad aliud examen*, and to be diſcuſs'd per aliam Legem. 3 Inſt. 121.

8. But ſome have made a *Queſtion*, whether, *ſince the Eccleſiaſtical Juriſdiction was acknowledged to be in the Crown*, an Eccleſiaſtical Judge holding Plea of temporal Matter belonging to the Common Law incurs the Danger of a Premunire? Tho' hereof there is no Queſtion at all, yet leſt any Man might be led into an Error in a Caſe ſo dangerous, we will clear this Point by Reaſon, Precedent and Authority; the Reaſon holdeth ſtill, to draw the Matter Ad aliud examen &c. and the like Queſtion might be made for the Admiral Court, which is and ever was the King's Court, but governed per aliam Legem; and ſo likewiſe of the Court of the Conſtable and Marſhal. 3 Inſt. 121.

9. The Biſhop of Norwich was attainted in a Premunire at the King's Suit, and his Caſe was this. Within the Town of Thetford there then was a *Cuſtom, That all Eccleſiaſtical Cauſes* ariſing within the ſaid Town *ſhould be determined before the Dean* there, having a peculiar Eccleſiaſtical Juriſdiction, *and that no Inhabitant* of the ſame Town *ſhould be drawn before any other Eccleſiaſtical Judge, and that every Perſon ſuing contrary* to that Cuſtom, the ſame *being preſented before the Mayor* of Thetford, *ſhould forfeit* 6 *s.* 8 *d.* and that an Inhabitant of Thetford, for an Eccleſiaſtical Cauſe ariſing in Thetford, ſued another before the Biſhop of Norwich within his Conſiſtory Court at Norwich; and this was preſented before the Mayor of Thetford, according to the Cuſtom, whereby he forfeited 6 s. 8 d. The ſaid *Biſhop cited the* ſaid *Mayor* for taking the ſaid Preſentment, *Pro ſalute animæ, to appear* before him at his Houſe at Hoxton in Suffolk, where the Mayor appeared, and *the Biſhop ore tenus injoin'd*, upon Pain of Excommunication, *to annul the ſaid Preſentment* before a Day. And for this Offence he was attainted in a Premunire, upon his Confeſſion before Fitzjames Ch. J. and the Court of King's Bench, upon the Statute of 16 R. 2. the Record whereof Lord Coke ſays he has ſeen. By which Judgment two Points are cleared. 1. That the Statute of Premunire extends to Eccleſiaſtical Courts within the Realm. 2dly. That after the King was in Poſſeſſion of his Supremacy the Biſhops incurr'd the Danger of Premunire. 3 Inſt. 121. cites 25 H. 8. coram Rege, the Biſhop of Norwich's Caſe.

10. A Writ of Premunire upon the Statute of 27 E. 3. for *ſuing before the Preſident and Council in Wales after Judgment given in the Court of Common Pleas in* an Action of *Debt* for 42 l. 10 s. in Subverſione Legum Antiquarum &c. 3 Inſt. 124. cites Trin. 21 Eliz. C. B. Rot. 319. Beans v. Loyd.

11. T. S. Parſon of N. brought a Writ of Premunire againſt R. T. upon the Statute of 27 E. 3. for *ſuing in the Court of Audience* of the Archbiſhop of Canterbury, *to impeach a Judgment given in a Quare Impedit before the Juſtices of Aſſiſe* in the County of Suffolk &c. The Defendant pleaded Not Guilty &c. 3 Inſt. 122. cites Trin. 29 Eliz. C. B. Thomas Stoughton's Caſe.

S. P. Hawk. Pl. C 51. cap. 19. S. 16.

12. An Information upon the Statute 27 E. 3. againſt Sir Anthony Mildmay, for that he and other *Commiſſioners of Sewers did impeach a Judgment in the King's Bench.* He purchaſed a Pardon from the King, and pleaded it. 3 Inſt. 125. cites Hill. 12 Jac. coram Rege.

(P. a. 8) * *Pardon.* The *ſeveral Kinds* of Pardons, and the Difference.

*The Power of pardoning all Offences is an *inſeparable Incident to the Crown* and its Royal Power; 'tis as much for the Good of the People that the King ſhould pardon, as that he ſhould puniſh. 2 L. P. R. 269.

1. ALL Pardons are *either General or Special*, and are either *by Act of Parliament*, (whereof the Court in ſome Caſes ſhall take Notice) *or* by *Charter of the King* (which muſt always be pleaded). And theſe again are either abſolute, or under Condition, Exception or Qualification; for ſome of thoſe Pardons laſt mentioned the Party may have a † Writ of Allowance, or take an Averment in certain Caſes; in others the Party may be aided by Averment only, where no Writ of Allowance doth lie. 3 Inſt. 233.

Per Holt Ch. J. Show. 284. Mich. 3 W & M. in Caſe of The King v. Parſons.—— Tit. Pardon, cites S. C.——† See (U. a. 12).

2. A *Special Pardon* ſhall be taken *for the Advantage of the King*, becauſe it comes *at the Suit of the Party*; but a *General* Pardon ſhall be taken

taken more for the *Benefit of the Party*, becauſe this proceeds from the King himſelf, and of his Special Grace, & ex mero motu. Adjudged. Latch. 22. in Boſton's Caſe.

3. Per Jones and Dodderidge Juſtices, A *Coronation Pardon* is but in Nature of a *Particular* Pardon, and differs from a General Pardon in that, where no certain Time is ſpecified as to the Offences, it ſhall not diſcharge any previous Offences for which Judgment has been given, but a general Pardon ſhall. Latch. 141. Davy's Caſe.

4. A *Coronation Pardon* is no Pardon till ſued out, and is not like a General Pardon. Per Doderidge J. Latch. 141. Davy's Caſe.

(P. a. 9) Pardon. *In what Caſes not neceſſary; and* in what *grantable of Courſe.*

1. *Stat. Glouceſter, cap.* 9. ENACTS that *in Caſe it be found by the Country, that a Perſon tried for the Death of a Man, did it* in his Defence, or by Miſfortune, *then by the Report of the Juſtices to the King, the King ſhall take him to his Grace if it pleaſe him.*

Where a Man is indicted of the Death of a Man, and it be found upon the Arraignment that it was done *Se Defendendo*, upon a Certificate of this Indictment and Arraignment found as aforeſaid, the *Chancellor* in this Caſe *ſhall grant a Pardon* to the Party for his Life, *without applying to the King*. By all Judges of England. Jenk. 188. pl. 87. cites 19 H. 7.——S. P. Hawk. Pl. C. 76. cap. 29. S. 25.——S P. Br. Charter de Pardon, pl. 65. cites 4 H. 7. 2.

Serjeant Hawkins ſays, By this Statute at firſt Sight it ſeems to be imply'd, that it is left to the Diſcretion of the King, whether he will grant a Pardon in ſuch Caſe, or not. And agreeable hereto it is ſaid in four ſeveral Notes in Fitzherbert's Abridgment of Caſes in the Time of E. 3. That a Perſon found Guilty of Homicide Se Defendendo, is to be remitted to Priſon, in order to attend the King's Grace. And yet in two other Notes in the very ſame Year, it is ſaid, That in ſuch Caſe, if the Priſoner cauſe the Record to come into Chancery, the Chancellor will make him a Charter of Pardon without ſpeaking to the King; and this ſeems to be ſettled at this Day, and agreeable to the ancient Common Law, which ſhall not without expreſs Words be reſtrained by a Statute which ſeems to be made in Affirmance of it. And therefore theſe Words in the Statute, (if it ſhall pleaſe the King,) ſhall be taken to be ſpoken only out of Reverence to him, and not as intended to make the Right of the Subject to ſuch a Pardon precarious. And the Caſes above-cited, which ſeem to the contrary, may be reconciled with the others, by intending them to mean only the Grant of the King's Pardon to a Perſon repreſented to him as Guilty of Homicide Se Defendendo, without any Certificate of the Verdict upon Record; for none of thoſe Caſes make any Mention of ſuch Certificate, as the others do; and if there be no ſuch Certificate, it ſeems plain that the Grant of a Pardon is a meer Matter of Favour. And it has been adjudged, that ſuch a Pardon is as neceſſary for one who is indicted only of Homicide Se Defendendo. and confeſſes it, as for one who is found Guilty of Homicide Se Defendendo, on an Indictment of Murder. 2 Hawk. Pl. C. 381. cap. 37. S. 2——S. P. 2 Inſt. 316. 317.

2. Where ſpecial *Fact, amounting to Juſtifiable Homicide*, is found by the Jury, the Party is to be diſmiſs'd without being obliged to purchaſe any Pardon &c. Hawk. Pl. C. 70. cap: 28. S. 3. H. P. C. 38.

(Q. a) *What* Thing *ſhall paſs* by a Pardon.

Fol. 178. bis.

1. IF A. be bound to B. in an Obligation of 100 l. and after B. is attaint of Felony, **and after the King by his Letters Patents pardons him, by theſe Words, ſcilicet,** Pardonavit, remiſit & relaxavit prædict. B. ſectamque pacis ſuæ quæ ad ipſum Dominum Regem verſus ipſum pertinet de eo quod fecit **ſuch Felony &c.** & Omnia quæ ad Dominum Regem pro Felonia præd. verſus ipſum Regem tunc pertinet, vel pertinere potuit &c. firmamque Pacem eidem B. inde conceſſit: **This does not reſtore B. to the ſaid** Obligation; **for it was in the actual Poſſeſſion of the King by the Attainder before Office found,**

See (S. a) (U. a. 3) Travel v. Carteret.

found, and here are not any Words of Grant or Reſtitution, but only of Pardon. Trin. 23 Car. B. R. between *Drew and Chappel*, adjudged upon a Demurrer. Intratur Hill. 11 Car. Rot. 921.

2. A. was bound to the King in a Recognizance of 1000 l. and was *attainted of Treaſon*; the King pardoned him, and reſtored to him all his Goods and Chattels which he forfeited by the Attainder: This Debt to the King remains; for it was only ſuſpended by the Delinquency of A. By all the Judges of England. Jenk. 209. pl. 43. cites 1 Mar. D. 124.

3. In Debt on Bond Defendant pleads, that after the making it the Plaintiff was attainted for Coining, which the Plaintiff confeſſes, and ſays that afterwards the Queen did by Pardon reſtore unto him *omnia Bona & Catalla ſua*; and on Demurrer the Queſtion was, Whether Debts by Specialty were included in thoſe Words? Goldsb. 114. Adams v. Oglethorpe.

4. A. became Felo de ſe in the Year 1648. afterwards by the Act of General Pardon all Felonies were pardoned, excepting Murder; and then upon an Inquiſition it was returned, that A. had a *Term for Years* of the yearly Value of 100 l. It was adjudged that this was pardoned by the General Pardon; for *nothing is veſted in the King till Inquiſition found*; and no Inquiſition was found till after the General Pardon, and ſo the Term for Years was gone before the Inquiſition found. Sid. 150. 15 Car. 2. The King v. Warde.

Lev. S. S. C. ——S. P. Hawk. Pl. C. 68. cap. 27. S. 9.—*But* in Scire Facias by an Adminiſtrator, the Defendant pleaded that the Inteſtate in the Year 1655 became a Felo de ſe; and this was found by an Inquiſition before the General Act of Pardon; Plaintiff demurs. Adjudged that this *Debt being veſted in the King before the General Pardon*, was not pardoned thereby, and could not paſs without *Words of Reſtitution*. Per Cur. Sid. 168. Mich. 15 Car. 2. B. R. Tombes v. Etherington.——Saund. 361. S. C.——2 L. P. R. 269. Tit. Pardon, cites S. C.——Lev. 120. S. C. ſays it was reſolved that the Debt was *extinguiſhed* in the Hands of the Debtor by the Clauſe of the Act, which pardons and releaſes *all Cauſes, Things, Quarrels, Suits, Judgments and Executions*; which is to be taken generally, as well *Judgments and Executions for Debts of the* King, as for *Offences*; and as well for *Debts due to the King by Aſſignment or Forfeiture*, as Debts due to him *originally*.——S. P. 2 Hawk. Pl. C. 396. cap. 37. S. 55.

5. 12 *Car.* 2: pardoned *all Debts, Judgments &c.* An Inquiſition found one *Felo de ſe*, who *had a Debt due by Judgment* to him. This is pardoned by the ſaid General Pardon. Sid. 264. Trin. 17 Car. 2. B. R. Lock v. Etherington.

6. The Word (*Pardon*) *includes* in it ſelf the Word *(Releaſe)* and ſo are 1 H. 7. 10. 11 H. 7. 11. For all, that is not within the Exception, is by the general Words pardon'd and gone; and the Caſe of Sir George Vinion of late Time in the Exchequer, does not oppoſe it; for there Sir *G. B. being indebted to the King, and J. S. being indebted to him*, Proceſs out of the Exchequer Chamber iſſued againſt J. S. and his Goods ſeiſed for the King, and then came the Act of Oblivion; and adjudged that the Debt of J. S. remained, becauſe he was Debtor to Sir G. B. and not to the King; but if he had been an *immediate Debtor* to the King, the Debt ſhould be gone, per Twiſden and Keeling J. againſt Windham J. upon Conference with the Barons of the Exchequer and other Juſtices. Sid. 265. Trin. 17 Car. 2. B. R. in Caſe of Lock v. Etherington.

7. The King preſented to a Benefice which had become void by a Simoniacal Agreement, and afterwards by a General Pardon reſtores *all Goods and Chattels forfeited* by Reaſon of any Offence done. Per Cur. The King's Preſentee has a good Title notwithſtanding the Pardon; for here was an Intereſt veſted in the King, which the Pardon cannot diveſt; and the Preſentation ſhall not paſs by the Words (Goods and Chattels) which are Things of a lower Nature, and all in the Perſonalty, as was ſaid. Arg. 2 Mod. 52. Trin. 27 Car. 2. The King v. Turvil.

8. A Pardon *of all Forfeitures* will not *diveſt an Intereſt veſted* in the King. Per Cur. 3 Mod. 100. Paſch. 2 Jac. 2. B. R. The King v. Saloway.

(Q. a. 2) Pardon of one, in what Caſes it ſhall be a Pardon of another.

See (Q. a. 3)

1. PARDON of the King granted *to an Approver ſhall diſcharge the Appellee.* Br. Charters de Pardon, pl. 62. cites 47 E. 3. 5. *Contra of Death of Appellor*; there he may be arraigned upon the Approvement. Ibid.

2. If *Twenty are indicted of Felony*, and after the *King pardons the one, without making Mention of the others*, this is good; for *Felony is ſeveral*, and not joint, and it is as ſeveral Indictments againſt every one by himſelf, and not joint. Br. Charters de Pardon, pl. 45. cites 6 E. 4. 5.

3. If two are *Joint-Debtors* to the King, and he *pardons the one*, this ſhall not ſerve the other; quære. Br. Patents, pl. 90. cites 2 R. 3. 4. S. P. For it ſhall be intended to be of a Sole Debt due by him only, as it was ſaid; therefore quære. Br. Charters de Pardon, pl. 57. cites S. C.——*So* where *two are bound to the King, and both in toto*, and the *King releaſes* to the one, the other ſhall not take Advantage. Br. Charters de Pardon, pl. 4. cites 34 H. 6. 3. & 50. 35 H. 6. 1. 25.—— S. P. Br. Ibid. pl. 36. cites 1 H. 7. 10.——*Contra*, it ſeems, *of Joint Bond* by two, and he releaſes to the one. Per Aſhton; but per Danby and Priſot, it ſhall ſerve both, where they are bound both in toto. Brooke makes a Quære. Br. Charters de Pardon, pl. 4. cites 34 H. 6. 3. & 50. 35 H. 6. 1. 25.——*For* it was ſaid there that in the Exchequer, if *two* are *Accountants*, and the King releaſes to one, yet thoſe of the Exchequer will have the whole Account of the other. Ibid.

4. If *a Man and his Sureties* are *bound to pay Fine to the King, or 20 l. by a certain Day*, and do not pay at the Day, and the *King pardons the Principal*, this ſhall diſcharge the Sureties. Br. Charters de Pardon, pl. 36. cites 1 H. 7. 10. It is agreed, That if a Man be *bound* to the King *as Surety* for another *for the Payment of* a certain Fine, or other *Debt due to the Crown*, the Pardon of the Principal is a Diſcharge of

5. *Contra of Sureties of the Peace*; for there nothing is due till the Bond is forfeited; for there if the King *pardons the Principal after Forfeiture*, the Sureties are diſcharged. *Contra* of Pardon *before the Forfeiture.* Ibid.

6. *And* where a Man is *bound, that A. Sheriff of N. ſhall pay his Profers ſuch a Day*, Releaſe of the King to the Sheriff after the Day does not acquit the Surety of the Breach. Contra of Pardon before the Default. Per Townſend. Br. Charters de Pardon, pl. 36. cites 1 H. 7. 10.

the Surety alſo. *But* it ſeems to have been holden as a general Rule, That *where* a Man is bound as Surety for another, *for the Performance of a future Act*, the *Diſcharge of the Principal before the Time of Performance*, will not diſcharge the Surety, becauſe nothing was due to the King at the Time of ſuch Diſcharge. But it ſeems *extremely nice*; neither do the Caſes brought for the Proof of it ſeem any Way to come up to it; for as to the firſt of them, viz. That of the King's Releaſe of a Recognizance of the Peace to the Principal before it is forfeited, which ſhall not diſcharge the Sureties, it may be anſwered, That it will not ſo much as diſcharge the Principal. And as to another Caſe cited for this Purpoſe, viz. That of the King's pardoning J. N. the Building of ſuch a Houſe, for his Building whereof J. S. is bound to the King, which ſhall be no Diſcharge to J. S. it may be anſwered, That as this Caſe is put, J. N. doth not ſeem to be bound at all, but only J. S. who therefore does not ſeem to come under the Notion of a Surety, but of a Principal. 2 Hawk. Pl. C. 387. cap. 37. S. 23.

7. An *Alienation without Licence to* A. Tenant *for Life, Remainder to B. in Fee*; a Pardon of Alienation to A. will not ſerve B. Jenk. 222. pl. 77. *But* where Alienation is *to two Joint-tenants in Fee*, a Pardon of all Alienations to one will ſerve the other; for they make but one Tenant. Jenk. 222. pl. 77. cites 14 H. 6. 26.——This was as the Law ſtood before the 12 Car. 2. cap. 24 which took away Fines for Alienations.

See (Q. a. 2)

(Q. a. 3) Pardon of *Principal*, in what Caſes it pardons the *Acceſſary*.

2 L. P. R. 269. Tit. Pardon, cites 3. C.

1. A. WAS indicted as Acceſſary to a Burglary committed by one who had been *tried and attainted*, but *procured his Pardon*, which had been *allowed*; and now A. prayed that ſhe might be diſcharged: But reſolved that ſhe *muſt plead to the Indictment*; for tho', if the Principal have either his Clergy, or be acquitted, or obtain his Pardon before Judgment, the Acceſſary ſhall not be queſtioned; yet *if the Principal be attainted* the *Acceſſary muſt anſwer*, tho' the Principal be pardoned. Raym. 477. Mich. 34 Car. 2. Anon.

2. It ſeems generally agreed, That notwithſtanding all Felonies are ſeveral, and conſequently a Pardon of one Man cannot be a direct Diſcharge of another, yet in ſome Caſes the Felony of one Man may be ſo far dependent upon that of another, that the Pardon of one will by a neceſſary Conſequence enure to the Benefit of the other: As where the *Principal* pleaded *his Pardon*, and was *allowed* it *at Common Law before his Attainder*, *or* where he pleads, and is allowed it *at this Day before his Conviction*; in which Caſe it ſeems that the Acceſſary may by a neceſſary Conſequence take Benefit of it, becauſe he cannot be arraigned till after the Principal is convicted. 2 Hawk. Pl. C. 387. cap. 37. S. 22.

See (S. a) (U. a)

(R. a) The Pardon of what Things Incluſive, ſhall be Pardon of others.

1. D. 8 Eliz. 249. 83. Brereton. **Manor held in Capite, being in Leaſe for Years, and Rents reſerved deſcended to the Heir, who entered and took the Rents, and** before Office found, General Pardon **of 5 El. came and diſcharged** all Intruſions and Entries, **and by the Court of Wards Saunders and Dier,** conſequently Meſne Iſſues and Liveries **are diſcharged, and a Precedent cited accordingly, by the Opinion of 5 in the ſame Caſe; but the Land was not in Leaſe. But by 2 The Queen may have Action of Account againſt Brereton as her Bailiff or Receiver, and alſo an Action of Debt againſt the Leſſees, who both are excepted out of the Pardon.**

2. 3 H. 7. 3. b. **Huſſey ſeemed to be Contra; for he ſaid that if Pardon be made** to the Heir of an Intruder, of the Intruſion, **Office found after ſhall ſerve the King for** all the Profits before [but] **not to [any] other * Intent.**

* Orig is (Entant.)

3. 16 E. 4. 1. **cited in St. Prerogative** 40. b. **the Pardon** ought to be as well of the Profits as of the Entry, **or otherwiſe after Office found, the King ſhall be anſwered of the Profits.**

4. **St. Prerogative** 40. b. **After Death of the Anceſtor the Heir enters, the King pardons him** all Entries with the Profits before Office found; **this pardons Livery, and** is ſpecial Livery.

5. If the King pardons Outlawry, which is promulged upon *Indictment of Treſpaſs* at the Suit of the King, and whatſoever belongs to the King, yet he ſhall make Fine and Ranſom; for *Fine and Ranſom are not pardoned unleſs by ſpeical Words.* Br. Charters de Pardon, pl. 30. cites 22 Aſſ. 47.

6. Felony is ſaid to be included in High Treaſon, and conſequently a *Pardon of Felony diſcharges* an *Indictment of High Treaſon*, if it want the Word *Proditorie.* Hawk Pl. C. 65. cap 25. S. 2.

(S. a) *What*

(S. a) What ſhall be [*ſaid to be*] pardoned [*by a General Pardon.*]

See (P. a 8) (R. a) (U. a) —Parks, pl. 6.—Prohibition (S.)

1. IF a Man upon a Suit in the Eccleſiaſtical Court be condemned in Coſts to the Party, and thereupon is Excommunicated, and after comes the General Pardon of 21 Jac. and after a Significavit is made, and he taken upon a Capias de Excommunicato capiendo, and this returned in B. R. he may come into B. R. without any Scire facias againſt the Party at whoſe Suit he was taken, and plead the Pardon in Diſcharge of the Contempt; and it ſhall be allowed; for the Contempt of the Excommunication was pardoned, tho' not the Coſts, and the Party ought to begin again to compel him to pay the Coſts. P. 17 Car. B. R. between *Codrington and Rodman.* Adjudged per Curiam, and there cited *Purſlowe's Caſe* in B. R. Mich. 2 Car. adjudged.

Cro E. 198. S C.——Jo. 227. S C. by Name of Cudrington v. Redman.——S P. 2 Hawk. Pl. C. 394. cap. 37. S. 42.——In Error of a Judgment in Debt, the Defendant pleads that the Plaintiff was *Excommunicated*; to which the Plaintiff in Error pleads the General Pardon. And the Court (as it ſeems) held, that by it the *Excommunication was diſcharged*, for they awarded a Reſpondeas Ouſter. 8 Rep. 68 a. Mich. 6 Jac. Trollop's Caſe.—It was doubted by the 2 Ch. Juſtices whether an Excommunication might be diſcharged by the King's Pardon, and the Plaintiff reſtored to his Suit, without Abſolution and Reconciliation to the Church. Cro. J. 212. Trollop v. Richardſon.——The Impriſonment upon the Contempt is diſcharged, but not the Taxation of Coſts (being for the Plaintiff's Benefit;) and by Conſequence the Excommunication is not diſcharged; for that depends upon the Principal: Wherefore he was remanded. Cro J. 159. Banning v. Fryer.

2. If a Man be *attainted of Felony by Outlawry or Verdict*, and the King *pardons* him *all Felonies*, this ſhall not ſerve. Per Strange; for it ſhall be intended that the King had not Conuſance, and was deceived in his Grant. Br. Patents, pl. 15. cites 8 H. 6. 19.

S. P. 2 Hawk. Pl. C. 383. cap. 37. S. 8.——S. P. Lat. 141.—S. P. But the particular Crime for which he is convicted ought to be particularly mentioned. 2 L. P. R. 270. Tit. Pardon.——*So* a General Pardon *of all Robberies* is not good, where there is a *Conviction by Verdict* of one in particular. Sid. 430. Mich. 21 Car. 2. B. R. The King v. Maddocks.——A General Pardon of all *Felonies* does not extend to *Piracy*. Hawk. Pl. C. 99. cap. 37. S. 6.——S. P. 2 Hawk. Pl. C. 384. cap. 37. S. 11.

Serjeant Hawkins ſays, It has been holden that *anciently* a Pardon of all *Felonies included* all *Treaſons*, as well as Felonies whatſoever; *and* it ſeems to be taken for granted in many Books, that a *Pardon of all Felonies* in general, without deſcribing any one in particular, *may*, even at this Day (if the Party be neither attainted nor indicted) *be pleaded in Bar of any Felony* whatſoever, coming within the General Limitations thereof, *except Murder or Rape*; and the Reaſon why it cannot alſo be pleaded to Murder or Rape is, becauſe the Statute of 13 *R.* 2. *requires an expreſs Mention of them.* But the Serjeant ſays he finds this Point no where ſolemnly debated, neither does it ſeem eaſy to reconcile it with the general Rules concerning Pardons, agreed to be good in other Caſes; for if a Felony cannot be well pardon'd where it may be reaſonably intended that the King when he granted the Pardon was not fully appris'd of the State of the Caſe, much leſs does it ſeem reaſonable that it ſhould be pardoned, where it may be well intended that he was not appris'd of it at all. And if a Felony whereof a Perſon is attainted cannot be well pardoned, even tho' it appear that the King was informed of all the Circumſtances of the Fact, unleſs it alſo appear that he was informed of the Attainder, much leſs does it ſeem reaſonable that a Felony ſhould be well pardon'd, where it does not appear that he knew any Thing of it; for by this Means, where the King in Truth intends only to pardon one Felony, he may by Conſequence pardon the greateſt Number of the moſt heinous Crimes. And for theſe Reaſons he ſuppoſes General Pardons are commonly made by Act of Parliament. As to the Precedents of ſuch General Pardons in Raſtal's Entries, it may be anſwered, That their Authority ſeem to be of leſs Weight, when compared with thoſe many Precedents of Pardons in the Regiſter, every one of which particularly deſcribes the Offence which is pardoned, and even thoſe which relate to Homicide by Lunaticks or Infants, or in Self-defence &c. except only one which pardons Eſcapes, but expreſsly excepts all voluntary ones. And therefore where the Books ſpeak of Pardons of all Felonies in general as good, perhaps it may be reaſonable for the moſt Part to intend that they either ſpeak of a Pardon by Parliament, or that they ſuppoſe that the particular Crime is mentioned in the Pardon, tho' they do not expreſs it 2 Hawk. Pl. C. 383. cap. 37. S. 9.

3. A Pardon granted at the Suit of the Party, *ſhall be taken more ſtrong for the King, and more ſtrong againſt the Party*; *but* a *General Pardon*, *or* a Pardon granted *ex mero Motu*, ſhall be taken more ſtrong againſt the King,

Br Patents, pl. 24 cites S. C.——

Lat. 22. S. P. adjudged in Bolton's Caſe

King, and more ſtrong for the Benefit of the Party; for it is intended there that the King has Knowledge of the Matter: Contra where it comes by Suit of the Party, or by Surmiſe. Br. Charters de Pardon, pl. 25. cites 37 H. 6. 21.

Br. Charter de Pardon, pl. 71. cites S. C.—— *But* where Intruſions are pardon'd by Parliament

4. If it be *found by Office, that the Tenant of the King died ſeiſed, and that his Heir intruded*, and after *Intruſions are pardoned by Parliament*, yet the *Heir ſhall render the Meſne Profits*, but ſhall not be puniſhed for the Intruſion, for this is pardoned, but not the Profits; and the Eſcheator ſhall be charged of the Profits where the Office is recorded. Br. Intruſion, pl. 21. cites 33 H. 8.

before Office found, where the Heir has entered, there the Profits, the Entry, and Livery and all are pardoned; and there, tho' the Office comes after, which finds the Intruſion of the Heir, yet *all is gone* by the Pardon. Br. Intruſion, pl. 21. cites 33 H 8.——Br. Charters de Pardon, pl. 71. cites S. C—— Br. Intruſion, pl. 16. cites 3 H. 7. 3. S.P.———Br. Office devant, pl. 31. cites S C.——Br. Livery, pl. 65. S. P.———S. P. Dy. 241. adjudged.——S. P adjudged Ley 48. Sauntlyer's Caſe, where Lands were held in Capite, and were deviſed from the right Heir to B the next Heir, during whoſe *Minority* J. S. entered and received the Profits; and held, that tho' *Intruſions* were excepted expreſsly in the Pardon, yet this was within the Pardon, becauſe *no Office was found*.

If there be an Intruſion, and an Office found of it, a Pardon after the ſaid Office ought to pardon the Intruſion and the Meſne Profits, or elſe it will not diſcharge them; for they are veſted in the King, and being veſted, they cannot be diſcharged without being mentioned: In the principal Caſe they were never veſted, for the ſaid Pardon before the Office found prevented the veſting of them. Jenk. 234. pl. 9.

5. A. Tenant by Knight Service in Capite dies, his *Heir of full Age*; he *enters and takes the Profits before any Office* found. 5 Eliz. an *Act of Parliament pardons all Entries and Intruſions*: This diſcharges the Meſne Iſſues taken, and juſtifies the Entry, and amounts to a Livery. *The Entry* before the Office *being pardoned, all the Conſequences of it are pardoned*; Livery is made to the Heir to juſtify his Entry; and an Office found afterwards comes too late. By the Court of Wards, and all the Judges Aſſiſtants there. Jenk. 234. pl. 9. cites 8 Eliz. D. 249.

So a General Pardon of the King ſaved Jurors, who had *eat at the Plaintiff's Charge*, from

6. Jurors *eat* and drank *at their own Coſts* before Verdict, and after their Departure from the Bar; and this was certified upon the Poſtea: And it was held that the Jurors were finable; but it was held clearly, that it was pardoned by the General Pardon. Mo. 599. pl. 825. Hill. 37 Eliz. Hall v. Vaughan.

Cenſure. Freem. Rep. 79. Paſch. 1673. C. B. Bellamy v. Player.

7. If one *pleads a falſe Plea*, for which he is fineable, and after and before the Judgment there comes a General Pardon, the Judgment ſhall be that he is not in Miſericordia quia Pardonatur. Mo. 599. pl. 825. Hill. 37 Eliz. Hall v. Vaughan.

Mo. 394. S. C. —— Jenk. 258. pl. 54. cites S. C.

8. A Writ of Entry was brought, and before Judgment came the General Pardon Anno 35 Eliz. by which *all Fines, Amerciaments, Contempts &c.* were pardoned; after which there was Judgment for the Plaintiff, but the Entry was, *Sed non Miſericordia quia pardonatur*. Upon Error brought, it was held a good Judgment, and that by the Pardon of the *original Tort* the *Amerciament* was diſcharged; for the Cauſe of the Amerciament was the *Tort and Contempt* of the Tenant, in not rendring the Land to the Tenant, according to the King's Writ; and tho' the Judgment and Amerciament were ſubſequent to the Pardon, yet the original Cauſe of Action being pardoned, of Conſequence the Amerciament is pardoned likewiſe. Adjudged. 5 Rep. 49. Mich. 39 & 40 Eliz. B. R. Vaughan's Caſe.

9 Sheriffs cannot collect *Fines or Iſſues* after a General Pardon; and for ſo doing an Under-Sheriff was puniſhed in the Star-Chamber. Godb. 178. Marriot's Caſe.

The Treſpaſs was ſaid to be done

10. *Treſpaſs* was *brought the 25th September* 1 Jac. *with a Continuando to the 27th of November* after: Upon Not Guilty pleaded by the Defendant,

dant, the *Plaintiff had Judgment:* The Judgment was not, Quod Capiatur; for a *General Pardon pardoned all Offences until* 24 September 1 Jac. and upon this, the Force, which gives a Fine to the King, was pardoned. Judged and Affirmed in Error. Jenk. 303. pl. 76. cites P. 6 Jac. Strickland v. Thorp.

21ſt June. with a Continuando &c. The Entry was, viz. Nihil de Fine, quia

pardonatur. It was inſiſted that only Part of the Treſpaſs was pardoned, viz. from 21ſt June to 25th September, but that the Treſpaſs from the 25th to the 6th November, is not pardoned, and therefore as to that there ought to have been a Capiatur: But the Court held the Judgment well enter'd; for the firſt Entry in a Treſpaſs being only Vi & Armis, the Pardon of this is a Pardon of all depending upon it; for the *firſt Entry only made the Treſpaſs*; beſides, it appears by the Declaration, that the Continuance of the Treſpaſs is not laid in the Entry, but only quoad Depaſturationem & Conſumptionem Herbæ, which is added only to increaſe Damages to the Party, but not the Fine to the King. Yelv. 126. S. C.——Cro. J. 207. S. C.——Brownl. 211. S. C.

11. A. was *indicted* upon the Statute *of Forcible Entry*, and *Reſtitution was awarded.* A. travers'd it, and a Venire facias was awarded, and *Diſtreſs with the Niſi Prius*; after which came a General Pardon, which pardon'd the Force: The ſaid Trial was ſtay'd, by the Opinion of all the Judges of England; for the *King will not proceed againſt his Pardon.* Jenk. 312. pl. 98. cites 1 Cro. 144.

12. A. exhibited a *libellous Bill* againſt B. in the Star-Chamber; after which came the General Pardon of the 21ſt Jac. and then for Want of Cauſe being ſhewn, it was taken off the File, and the Plaintiff fined 100 l. to the King, and 100 l. to B. and it was reſolved that the Fine and Coſts are diſcharged, upon the Authority of Hutt 79. Beverley's Caſe, which did not at all differ from the preſent, tho' a *Day* was here given *to ſhew Cauſe*; for the Plaintiff hath not any Means to plead the Pardon. Cro. Car. 68. Paſch. 3 Car. by all the Judges at Serjeant's-Inn.

13. If *Coſts* in the Eccleſiaſtical Court are *not taxed*, a General Pardon diſcharges them. Lat. 190. Palmer v. Warner.

Lat. 159. S.P.adjudg'd. —If *awarded*

before the Pardon, but *not tax'd* till after the Pardon, they are not diſcharged. Cro. Car. 9. Dr. Brickenden's Caſe.———Coſts were taxed *upon an Attachment* againſt an Attorney for Male-practice, by Way of *Amends to the Party grieved*, and then came out a General Pardon, which diſcharged the Contempt. The Court inclined that the Coſts were diſcharged, for they are *not Coſts upon a Judicial Proceeding*, but a Kind of *Compoſition* with the Offender, and ſo not like Coſts tax'd in the Eccleſiaſtical Court *pro Reformatione Morum.* 2 Vent. 194. Anon. cites 5 Rep. 51. Hall's Caſe.——2 Hawk. Pl. C. 394. cap. 37. S. 43.———A. was ſentenced for *Defamation* in Court Chriſtian, and appealed to the Arches, but, upon the Act of General Pardon of 21 Jac. 1. coming out, *quitted his Appeal*; upon which the Court of Arches taxed Coſts againſt him. The Court held clearly, and it was admitted on both Sides, that after the Pardon they had *no Power to tax Coſts*; and that the Defendant did well in *dropping his Appeal*, becauſe the Sentence on which it was founded was vacated by the Pardon of the Offence. Lat. 155. Lewis v. Whitton.——For a *Contempt in a Court of Equity*, if Coſts are taxed to the *Party grieved* before the Pardon, they are not diſcharged, becauſe it is in a Court of Equity, where Coſts are at the Pleaſure of the Judge. See 2 Vent. 194. ſays, it was held per Atkins Ch. B and Vent. J. in the Dutchy Court, that the Coſts were not diſcharged.——2 Hawk. Pl. C. 394. cap. 37. S. 43. cites S. C.——No Coſts for a Contempt diſcharged by the General Pardon. Toth. 108. cites 27 Eliz. Fulwood v. Fulwood.

14. The Coroner returned, that A. was *killed with a Gun by Miſadventure.* The Court held this not within the General Pardon; for that it was *Manſlaughter*, being occaſioned by an *unneceſſary Act*; and the Defendant muſt purchaſe a Pardon. (So that it ſeems the Act does not pardon Manſlaughter.) Sty. 337. Trin. 1652. C. B. Anon.

15. General Pardon does *not* pardon *Simony*, tho' it concludes with ſuch general Words, viz. *And all other Offences which the King can pardon.* It is true he cannot be puniſhed for this Simony upon the Statute, yet he ſhall be deprived; for in Truth it makes the Church void, tho' the King pardons it by expreſs Words. Sid. 170. Mich. 15 Car. 2. C. B. Philips's Caſe, cites Hob. 167.

2 L. P. R. 270. Tit. Pardon, cites S. C.——It is not pardon'd by thoſe Words, becauſe it is

Malum in ſe. Sid. 222. **Snow v. Phillips.** And ſays it was ſo adjudged in the Delegates in S. C.——But Serjeant Hawkins ſays this ſeems to be no good Reaſon; for Barretry, and the Injurious ſtriking of another, and generally all Offences at Common Law, are alſo Mala in ſe; and yet it ſeems clear, that unleſs they be Capital, they may be pardoned by ſuch a Pardon. 2 Hawk. Pl. C. 388. cap. 37. S. 26.

N. Ch. R. 95. Betton v. Ann. S. C.

16. A *Judgment for Rent Arrear*, which was diſcharged by the Act of Oblivion 1660. was decreed to be *vacated*. Chan. Caſes 55. Trin. 16 Car. 2. Bolton v. Arme.

17. *Money* not actually paid, but *retained*, was not diſcharged by the Act of Indemnity, as Lord Ch. J. Bridgman conceived; but 'twas referr'd to make a Caſe. Chan. Caſes 59. Mich. 16 Car. 2. Dickenſon v. Knowell.

18. A. was indebted to B. and afterwards during the Uſurpation, his Eſtate was ſold by the Sequeſtrators to B. who deducted out of the Purchaſe-money his Debt. After the Reſtoration and General Act of Pardon paſs'd, A.'s Heir brought a Bill in Equity againſt B.'s Executor, praying an *Account of the Profits*. The Court would not compel an Account; for that *all Monies received by the Profits*, are pardoned by the Act; but upon B.'s Executor conſenting to account, on paying back the Purchaſe-money, and B.'s Debt, it was decreed accordingly. Chan. Caſes 172. Trin. 22 Car. 2. in Canc. Stowel v. Long.

19. The Defendant was ſued in the Spiritual Court for *Dilapidations*, and pleaded the General Pardon, by which all Offences, Contempts, Penalties &c. were pardoned; and for this Reaſon he prayed a Prohibition; but it was denied, becauſe the Statute *never intended to pardon any Satisfaction for Damages*, but only to take away temporal Puniſhments. 3 Mod. 56. Hill. 36 Car. 2. B. R. Pool v. Trumbal.

20. A. was convicted of Barretry, and produced a Pardon, which was of all Treaſons, Murders, Felonies, and all Penalties, Forfeitures and Offences. The Court ſaid the Words (*All Offences*) will pardon all that is not Capital. 1 Mod. 102. Mich. 25 Car. 2. B. R. Angell's Caſe.

21. By the Act of General Pardon 13 Car. 2. S. 5. *All Debts* and Sums of Money *due to the Crown* are diſcharged, tho' they do not relate to the Wars. But Acts and Actions *of Subjects* are not diſcharged, unleſs they are ſuch as *concern the Wars*. Reſolved per Cur. 3 Lev. 134. in Caſe of Travell v. Carteret.

Serjeant Hawkins ſays, It ſeems to be a ſettled Rule, That Pardon by the King, *without expreſs Words of Reſtitution, ſhall not diveſt* either from the King or Subject *an Intereſt*, either in Lands or Goods, veſted in them by an Attainder or Conviction precedent; yet it ſeems agreed, That a *Pardon prior to a Conviction, ſhall prevent any Forfeiture* either of Lands or Goods. 2 Hawk. Pl. C. 396. cap. 37. S. 54.

22. A Queſtion was, Whether *after Verdict* for the King, a Pardon ſhall excuſe the *Forfeiture?* But adjornatur. See the Arguments on both Sides, 3 Mod. 241. to 243. Mich. 4 Jac. 2. B. R. The King v. Johnſon.

23. A. was indicted for keeping a Glaſs-houſe, being a *Nuſance*, and thereof convicted and fined; afterwards came the General Pardon: The Court held upon Conſideration, that he was diſcharged thereby only as to the *Fine*, and not as to the *Abatement of the Nuſance*; for that is not a Puniſhment to the Party, but a Removal of that which is a Grievance to other People, and which any common Perſon may abate. Salk. 458. Hill. 1 W. & M. B. R. The King and Queen v. Wilcox.

24. A. was *convicted of Deer-ſtealing* in the Sum of 20 l. The Queſtion was, Whether this was within the General Act of Pardon? Pengelly Serjeant argued that this was not pardoned, being a *final Judgment* on which a Writ of Error lies; and that it was not ſuch an Offence as could be pardoned, becauſe of the *Forfeiture to the Party grieved*, which is Part of the Judgment, ſo that he has an *Intereſt in the Penalty*, and becauſe the Puniſhment is by Way of *Satisfaction* to the Party, and not for *Example*. Arg. Salk. 383. M. 9 Ann. B. R. The Queen v. Barret.

25. A General Pardon pardons *Publick Offences* done to the Commonwealth, but *not private Injuries* done to particular Perſons; for if it ſhould, this would be to mix Mercy and Injuſtice togethar; to be pitiful to one, and cruel to another, in one and the ſame Act. 2 L. P. R. 271. Tit. Pardon.

26. Ser-

26. Serjeant Hawkins ſays, It has been queſtioned whether a General Pardon *of all Treſpaſſes* extends to *Champerty* or *Confederacy*. 2 Hawk. Pl. C. 389. cap. 37. S. 27.

(S. a. 2) What ſhall be ſaid within the Exception of a General Pardon.

1. A. WAS *indicted for Piracy*; and for Standing *mute*, was condemned to ſuffer the Penalty of *Peine fort & dure*. Before it was put in Execution came a General Pardon of *all Pains, Contempts and Executions*, excepting *Piracy*: And it was held by the major Part of the Juſtices, that the Party might be indicted again for the Piracy, the Judgment (which was pardoned) being only for the Offence in Standing Mute. Dy. 308. Paſch. 14 Eliz. B. R. Cobham's Caſe.

2. To an Information on the 5th Eliz. for *converting arable Land into Paſture*, and for *continuing the ſame three Years*, the Defendant pleaded Not Guilty as to the Converſion, and to the Continuance the General Pardon of the 15th Eliz. and on Demurrer it was argued on one Side, that the Act by excepting only this Converſion, did not extend to the Continuance, (they being diſtinct and ſeveral Things) and ſo the Continuance was pardoned: And on the other Side it was inſiſted, That the Converſion being excepted, that includes the whole Offence, and extends therefore to the Continuance. Adjornatur. Le. 274. Mich. 26 Eliz. in Scacc. Cleypole's Caſe.

S. C. argued Mo. 117. pl. 262. by Name of **Duland v. Cleppoole**, and ſays that the Counſel with the Defendant took diverſe Exceptions to the Information, which in Truth were material; wherefore the Court could not give Judgment with the Plaintiff; but that the Cauſe was ended by Compoſition.

3. The General Pardon of the 28th Eliz. is of all Felonies, excepting *Burglary* &c. The Queſtion was, Whether an *Attainder of Burglary* be within this Exception? It was reſolved by all the Juſtices of England, that it was excepted, for if ſuch an Exception would include Burglary *before it was tried*, tho' it does not then appear to be ſo in the Eye of the Law, and ſtands a Doubt left at the Trial, whether Burglary or not, a Fortiori ought it to be excepted when the Burglary appears of *Record* by Judgment at Law; and ſince the Burglary, which is the Foundation, is excepted, therefore every Thing conſequent thereupon, is excepted likewiſe. 6 Rep. 13. a. Caſes of Pardons.

2 Hawk. Pl. C. 385. cap. 37. S. 13. cites S. C. and adds, that therefore it being within the Letter of the Exception, it cannot but be intended to be within the Meaning of it alſo.

Neither does it follow, That becauſe a Pardon of a Felony whereof a Perſon is attainted, is not good, without mentioning the Attainder, therefore ſuch a general Exception of all Felonies, ſhall not extend to thoſe whereon there hath been an Attainder; for the Caſe of ſuch a Pardon depends on this Special Reaſon, that the King ought to be fully apprized of the Proceedings againſt the Party before he pardons him.———S. P. Jenk. 269. pl. 85.———3 Inſt. 234. cites Hill. 29 Eliz. S. C.——S. P. 3 Inſt. 238.

4. A. was bound in a *Recognizance to appear* before the High Commiſſioners, *and not to depart without Licence*; to which A. pleaded the General Act of Pardon, which excepts all Recognizances &c. except Recognizances for *Appearance*. Adjudged by all the Barons of the Exchequer, that the Departure without Licence was not pardoned, but within the Exception; for the *not departing without Licence* was only mentioned in the Recognizance, in order to continue her Appearance; and tho' not mentioned in the Exception, yet it is not a *collateral* Thing, but within the Senſe of it. 2 Le. 179. Trin. 31 Eliz. Paſchall's Caſe.

5. A.

A Bill was brought in the Star-Chamber, and then pass'd the General Pardon; and afterwards the Cause was tried, and a Fine set on the Defendant for Part of the Matter charged in the Bill, and for other Matter charg'd therein, the Plaintiff was fined to the King and the Party grieved, it being *scandalous, and not examinable by the Court.* The Question was, whether this Fine and Damages set upon the Plaintiff were within the Exception of the Pardon, which is of *all Offences &c. whereof, or for which any Bill within 8 Years before was, and is now depending.* Adjudged that it was pardoned, for this shall not be said to be a *Bill depending* (according to the Exception) *on the Part of the Plaintiff*, to charge *him* with the Offence; for his Bill can never be said a Bill depending against *himself*, on which the *Plaintiff* is to be fined; but it was only intended to except Bills depending, *with Regard to the Defendant*, and this Contempt was *accidental and collateral* to the Bill, which being pardoned, by Consequence the *Fine* is pardoned likewise. By all the Judges at Serjeants-Inn in Fleet-street, except one. Hutt. 79. Hill. 1 Car. Beverly v. Powell.——Jo. 89. S. C.

5. A. brought his Bill in the Star-Chamber for Riots and Routs &c. which was five Years before the General Pardon, in the Reign of Q. Elizabeth, wherein were excepted *all Penalties &c. incurr'd for any Offence &c. for which any Bill hath been exhibited within 8 Years before, and now depending*, and also except *all Offences, Contemps &c. for which any Bill was exhibited within four Years before, and now depending.* The Question was referred by the Court of Star-Chamber to Coke Solicitor-General, who certified that the Fine to the Queen was not pardoned, but excepted; but the Imprisonment and Corporal Punishment were pardoned: But if the Bill had been exhibited *within the four Years*, then the Offence itself being excepted, by Consequence all Incidents or Dependants upon it, whether Corporal or Pecuniary, are excepted; and therefore in that Case nothing is pardoned. And this Certificate has been often confirmed by the Opinion of the Court of Star-Chamber. 5 Rep. 46. b. Mich. 35 & 36 Eliz. Franklin's Case.

6. In the General Pardon of the 35 Eliz. there was an Exception of *all Offences for which any Suit at any Time within four Years before, or upon the last Day of this present Parliament, and is, or shall be now, on the last Day of the Sessions, depending in the Star-Chamber.* And in this Case a *Bill was exhibited* in the Term *before the Parliament*, and Process awarded *returnable the Term after* the Sessions ended. Adjudged that this was a Suit depending before the Return or serving of the Subpœna, and so within the Exception, this being a Process issuing out of, and returnable *into the same Court* where the Bill is exhibited, (viz.) the Star-Chamber; and there is a great Diversity between this and an Original issuing out of Chancery, and returnable in B. R. or C. B. for there the Original comes out of *another Court*, and there is no Record in B. R. or C. B. before the Return of it. Adjudged. 5 Rep. 47. Hill. 39 Eliz. G. Littleton's Case.

7. A. was *outlawed on a Recognizance* in Nature of a Statute Staple, and after came the General Pardon of the 39th Eliz. excepting *all Debts due* to the Queen *by Recognizance* &c. or otherwise, and except all Debts *already forfeited by Reason of any Outlawry.* It was resolved, that by the last Exception it appears to be the Queen's Intent not to include any Debts which accrued due by Outlawry within the first Exception; for as to these there is a *special* Saving, and in a special Manner; and being a General Pardon, it is to be taken most beneficially for the Subject, and most strongly against the Crown. 5 Rep. 49. b. 50. a. Hill. 41 Eliz. in Scaccario. Wyrral's Case.

Het 124. S. C.——Jo. 334. S. C.

8. The General Pardon of the 21 Jac. was with an Exception of *all Tithes, and Actions of Quare Impedit, other than such* which the King may have by Reason of any Lapse incurr'd Ultra three Years last past for any Benefice *whereof any Incumbent then was, or the last Day of the Parliament should be, in Possession by Presentation or Collation.* In this Case the Church became void by the Incumbent's taking another Benefice, and continuing so two Years, the King made Title to present by Lapse. Adjudged that the Pardon extended not to this Case; for that it was never the Intent of it to *dispense with Pluralities*, and the Defendant is not an Incumbent within the Proviso of the Exception, for he is an Incumbent

bent *by Uſurpation and Wrong*. Cro. Car. 354. Hill. 9 Car. Per all the Juſtices in the Exchequer Chamber, except two. The King v. the Archbiſhop of Canterbury and Pryſt.

9. A. being indebted to B. the King's Receiver, gave him a Bond, upon which his Lands and Goods were extended; and afterwards upon Security given to abide the Order of the Court, the Goods of A. were reſtored, and for ſo doing A. and C. enter into a Recognizance; and upon Breach thereof Judgment was had, and a Writ of Error brought, in which there was a Nonſuit after the General Act of Pardon; and then, a Scire Facias being brought, the Defendant pleaded the Pardon thereto, in which were excepted all Recognizances, Obligations &c. entered into by any Receiver ſince the 25th March, 1640; and in another Clauſe *all Bonds taken in his late Majeſty's Name before May* 1642. *for ſecuring the proper Debt of any Receiver of the Revenue*, were likewiſe excepted. This *Recognizance* was held to be included within the Exception under the Word *Obligation*; for tho' an Obligation is not a Recognizance in Pleading, it may well be ſo within the Meaning of an Act of Parliament, and this was given *in Lieu* of the Obligation entered into before, and is a *Bond of Record*; and ſo being both *Obligatory*, it is in this Caſe the ſame Thing. Hard. 366. Mich. 16 Car. 2. in Scacc. The Attorney General v. Ward.

10. A Bill was filed by A. in the Exchequer againſt B. for Wages due to him, as an Officer under him in the Mint, B. having been made Maſter of the Mint by the Keepers of the Liberties of England, and thereupon entered into Articles with them for Payment of the ſaid Wages. Upon the Reſtoration all Publick Debts and Securities were veſted in the King, but became diſcharged by the Act of Oblivion, excepting *the Accounts of Perſons who have received any of the Rents &c. of any Hereditaments of the Crown, and all Securities entered into by any Receiver or other Accountant in the Court of Exchequer*, and excepting any the *Goods, Money &c. of the late King, Queen, or Prince.* The Defendant pleaded the Pardon; and adjudged that this was a Caſe within it, and not taken out of it by any of the Exceptions; for the Exception of the late King and Queen's Goods extends only to ſuch as they were *actually poſſeſs'd of*; and as to the Word (*Accountants*) that relates only to common Accountants in the Exchequer, whereas this is the Caſe of a particular Accountant in a Collateral Way; nor is this an Account of the Rents &c. of any *Hereditament* of the Crown, properly ſpeaking, tho' it may be in a large Senſe ſo called, but the Product of the *Office*, or *Trade* of the Mint. Per Cur. Hard. 371. Mich. 16 Car. 2. in Scacc. The Attorney-General v. Guerdon.

11. One G. in the Year 1659. was *attainted* of Murder, *and executed*; and it was found by Inquiſition, that the ſaid G. *had lent* 30 *l. to the Defendant*, and that the Defendant was indebted to the ſaid G. for it. Whereupon a *Scire Facias iſſued againſt the Defendant*, who pleaded that ſhe was not indebted to the ſaid G. Modo & forma prout: And Hale Ch. B. held that the Act of General Pardon *excepts only the Offence, and not the Forfeiture, but that that is pardoned.* Hard. 421. Trin. 17 Car. 2. in Scacc. The King v. Margery Bernard.

12. Upon an Information againſt A. as Heir and Tertenant of the Lands of B. the King's Cofferer, for Monies received to the King's Uſe, the Defendant pleaded the Act of General Pardon 12 Car. 2. in which were excepted *all Fines &c. and other publick Duties received by any Sheriff &c. or other Officer for the late King's Uſe, and not accounted for and diſcharged*; and excepting all Offences in *Detaining, Imbezilling, or Purloining any Goods, Monies or Chattels of the late King, Queen, or Prince.* Adjudged that this Account was pardoned, and not within any of the Exceptions; for the detaining the late * *King's Goods and Monies*, relates only to Goods that were *once in his actual Poſſeſſion*, and then taken from

* Hard. 371. The Attorney General v. Guerdon. S.P. adjudg'd.

from him; and otherwiſe the whole Pardon might be defeated by this Exception, nor is it within the other Exception; for a *Cofferer* is a Perſon of higher Rank than any that are named in the Act, and a Superior ſhall not be included where an Inferior is firſt named; and ſo the Plea was allowed per Curiam. Hard. 441. Paſch. 19 Car. 2. The Attorney General v. Palmer.

S. P. For notwithſtanding his Offence may in Strictneſs be called Murder, and conſequently may ſeem naturally enough to come within the Exception, yet ſince the general Words of an Act of Parliament are to be expounded according to the common Uſe of them, and the Offences of Felo de ſe and Murder are generally underſtood as diſtinct Offences, and as ſuch are diſtinctly treated by all Authors, who when they uſe the Word Murder, as ſignifying a certain Species of Offence, always mean by it the Murder of another; and farther, ſince there is greater Reaſon to except the Murder of another out of a Pardon, than that of a Man's ſelf, becauſe both the Law of God and Nature ſeem generally to require Blood for Blood, which can be applied only to the Murder of another, the Word *Murder* ſhall in ſuch an Exception be taken *only to ſignify the Murder of another.* 2 Hawk. Pl. C. 387. cap. 37. S. 20.

13. If a General Pardon be with an *Exception of Murder*, yet it does not except a *Felo de ſe*, eſpecially where no Inquiſition was found till after the General Pardon. Sid. 150. Trin. 15 Car. 2. B. R. The King v. Warde.

A Suit was commenced after the Day in the Spiritual Court, and a Prohibition was moved for to ſtay the Suit, which was by the Succeſſor againſt the Executor of the former Incumbent; but the whole Court, upon hearing Counſel, and Conſideration of the Matter, conceived that the Parliament never intended to take away the Succeſſor's Remedy for Dilapidations, for that was to eaſe the Executor of the Wrong-doer, and tranſlate the Charge to the Succeſſor. But they would intend this Exception of ſuch Suits as might be in the Eccleſiaſtical Court *againſt the Dilapidator himſelf, to puniſh it as a Crime againſt the Eccleſiaſtical Law, and to pardon it, unleſs there were Proſecution before the Day aforeſaid.* And ſo the Prohibition was denied. 2 Vent. 216. Anon.

14. *Suits for Dilapidations* were excepted out of the Act of General Pardon of 2 *W. & M. Seſſ.* 1. *cap.* 10. *unleſs commenced and depending ſuch a Day.*

15. Information in Nature of a *Quo Warranto*, and *Judgment per Nihil dicit*, and a *Capiatur pro Fine:* The Queſtion was, Whether this was pardoned by the late Act? Holt Chief Juſtice delivered his Opinion, That an Interlocutory Judgment is not within the Exception of the Act; for by a *Judgment is meant a final Judgment*, it *being coupled with Sentence and Decree*, and a Capiatur pro Fine is only to bring them in to receive the Judgment of the Court; but this being a Matter of Right, viz. in a Quo Warranto, tho' the Fine be pardoned, yet the Continuance of the Crime is not. And he ſaid he remembered a Caſe upon the Act of Parliament, in King William's Time, where the Fine for the Nuſance was pardoned, but not the Continuance of the Nuſance. He ſaid likewiſe, that where Writs of Error ſay, Si Judicium inde redditum ſit, it extends only to final Judgments, and ſo does the Exception in the Act of Parliament. And Powel, Powis and Gould were of the ſame Opinion; wherefore Judgment was given, that the Defendant ſhould be ouſted of his Office for committing the Offence, but that the Fine is pardoned. 11 Mod. 235. Trin. 8 Ann. B. R. The Queen v. Tyrril and Barber.

Ibid. 697. the Reporter ſays, That the Lord Chancellor made the like Determination in the Cauſe of Kiffin v. Kiffin; and alſo for a Contempt of another Nature, relating to a Ward of Chancery, in Dr. Yalden's Caſe.

16. *Marrying an Infant Ward committed by Order of Chancery, and that without the Privity of the Committee*, is a Contempt of the Court; but a General Act of Pardon coming afterwards, tho' with an *Exception of all Contempts* and Offences, for which any Proſecution was then depending, and which had been *proſecuted at the Charge of any private Perſon or Perſons*, was held by Lord Ch. Parker to be pardoned, this Offence or Contempt ending only in the Puniſhment of the Party offending, and not in relieving or redreſſing the Proſecutor. Wms's Rep. 696. Paſch. 1721. Phipps v. Earl of Angleſey.

17. It has been holden, that a *Forfeiture due* to the King *by* Force of a *Conviction upon the Statutes* 29 *Eliz.* 6 *Par.* 5. *and* 3 *Jac.* 1. 4. *Par.* 7. ſhall not be taken to be within the Exception of a General Pardon, which *excepts all Forfeitures* &c. *converted to a Debt by Judgment.* Hawk. Pl. C. 16. cap. 10. S. 23.

18. It has been adjudged, That where a General Act of Pardon expreſely pardons *all Petit Treaſons*, but *excepts Murder*, it cannot be avoided by indicting one for Murder only, without the Word Proditorie &c. who has been Guilty of Petit Treaſon; * for the leſs Offence being included, and conſequently drowned in the greater, cannot but be pardoned by a Pardon of it; and therefore the Exception of Murder in ſuch a Pardon *muſt be conſtrued of ſuch Murder only as is ſpecially ſo called*, and doth not amount to Petit Treaſon. 2 Hawk. Pl. C. 386. cap. 37. S. 19.

* S. P. 2 Hawk. Pl. C. 165. cap. 23. S. 39.

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* (U. a) Charter of Pardon. *What* Thing ſhall be pardoned *by Pardon of other* [*Thing.*]

Fol. 179. bis.

See (R. a) (S. a)——*N.B. There is no (T. a) —†Br. Charters de Pardon, pl. 12. cites S. C.——‡ Br. Charters de Pardon, pl. 30. cites S. C.

1. **If a Man be** outlawed in Treſpaſs, **and the King** pardons the Outlawry, yet the Fine remains, **for this ſhall not paſs by any general Word.** †7 H. 4. 17. b. ‡ 22 Aſſ. 47. **adjudged.**

2. **But Pardon** of Treſpaſs before Outlawry will bar the Fine. 7 H. 4. 17. b. 7 S. P. For the Fine ſhall not be

but where he is outlawed, or otherwiſe attainted. Br. Charters de Pardon, pl. 12. cites S. C.

3. **If a Man outlawed at the Suit of the Party be pardoned of** the Outlawry, **yet he** is not reſtored to his Goods **thereby.** 7 H. 4. 5. S. P. For Pardon *ſhall not give Reſtitution of Goods*, but only a Reſtitution to the Law. Br. Charters de Pardon, pl. 11. cites 7 H. 4. 4. 5.

4. **If a Man** outlawed of Felony **purchaſe a** Pardon of the Outlawry, **yet his** Goods and Lands ſhall be forfeited. * 7 H. 4. 17. b. *In Error upon Outlawry pronounced*

upon Indictment of Murder, 'twas aſſigned for Error, *that at the Capias the King pardoned him all that in him is, all Chattels and Poſſeſſions; and prayed that the Outlawry be reverſed, and that he may have his Chattels:* And the Judgment was reverſed; but he did not *re-have his Goods*, becauſe it did not appear by Record here, which was againſt the Opinion of Hank. Quære; for it ſeems that it *ought to be by Words of Reſtitution, and not by Words of Pardon.* Br. Charters de Pardon, pl. 73. cites 9 H. 5. 14. 15.—* Br. Charters de Pardon, pl. 12. cites S. C.

5. **If a** Man bound in a Recognizance for Surety of the Peace kills a Man, **and is** pardoned of the Felony, **yet he ſhall not be diſcharged of the Recognizance.** 7 H. 4. 35. b.

6. If a Man be *indicted of Felony, and alſo of Treaſon, and* after he is *outlawed of Felony*, and then the *King pardons the Felony*, he ſhall not be *arraigned of the Treaſon*; for he cannot be dead but once. Per Catesby; but Brooke ſays the contrary is held for Law. Br. Charters de Pardon, pl. 44. cites 6 E. 4. 4. Br. Corone, pl 146. cites S. C. per Catesby.

7. If *three bring ſeveral Appeals of Robbery againſt W. N.* and *he is found Guilty at the Suit of the one*, he ſhall not be arraigned at the Suit of the others. Per Suliard; but Markham contra; quære. Br. Corone, pl. 146. cites 6 E. 4. 4.

8. A Man *abjured the Realm for the Death of a Man*, and was taken afterwards, and pleaded *the King's Pardon of all Felonies*; and was diſallowed; for it did not make Mention of Abjuring. Br. Charters de Pardon, pl. 23. cites 9 E. 4. 28. 3 Inſt. 238. cites S. C → S. P 2 Hawk. Pl. C. 383. cap. 37. S. 8.

9. One

9. One fined for Treſpaſs, and after the *Treſpaſs* is pardoned; the *Fine* ſhall not be diſcharged; becauſe the Pardon has no Relation to any certain Time. Lat. 141. Davy's Caſe.

The King brought Action of Debt upon an Obligation; the Defendant pleaded Non eſt Factum, and at a Niſi Prius it was found

10. If the *King has a Verdict* againſt A. *for Debts or Damages, and before Judgment* the King *pardons this Debt and Damages* to A. the King ſhall have Judgment: So it is between common Perſons; but becauſe neither a Scire Facias lies againſt the King for A. if he be in Execution, nor an Audita Querela, if he be not in Execution; this Pardon and Releaſe ſhall be *allowed to diſcharge the Execution.* Jenk. 183. pl. 72. cites 11 H. 7. 10. by all the Judges in the Exchequer Chamber.

the Deed of the Defendant, and before the Day in Bank, the King pardoned the Defendant all Debts, Quarrels &c. and after the King had Judgment, and ſued out Execution. Albeit by the Judgment a new Title to the ſaid Debt is accrued to the King of Record after the Pardon, the Obligation at the Time of the Pardon being but a Matter in Fact, yet becauſe the Obligation was the Foundation of the Debt, and the Matter whereupon Judgment was given, and by the Pardon the Debt due by the Obligation was extinct, the Judgment thereupon cannot bind, but is to be avoided by pleading the Pardon. 3 Inſt. 236.

(U. a. 2) Charter of Pardon. *Relation.*

Br. Charters de Pardon, pl. 4. cites S. C.

1. DEBT *by the King upon Obligation*; the *Defendant pleaded Non eſt Factum*, which *paſſed againſt him* by Niſi Prius, and *before the Day in Bank the King pardoned him* &c. this *diſcharges the Debt, but not the Fine*, which accrued by the Judgment after the Pardon, *by the denying of his own Deed*, and ſo no Relation of the Fine to the Action; for this incurr'd by the denying, which was before the Pardon, and the Judgment is by Reaſon of it. Br. Relation, pl. 22. cites 34 H. 6. 3. and 35 H. 6. 1. 25.

Br. Charters de Pardon, pl. 24. cites S. C.——A *Charter of Pardon* ſhall have *Relation to the Date, and not to the Livery*, being Matter of *Record*; otherwiſe of Matter *in Pais*.

2. Patent granted by the King, or Pardon, and other Matters of Record, ſhall have Relation *to the Teſte or Date* of it, and Matter in Fact to the Time of the Delivery only. Br. Patents, pl. 24. cites 37 H. 6. 21. Adjudged. Latch. 22. in Boſton's Caſe.

3. *Voluntary Eſcape* cannot be pardoned before the Act done. Br. Patents, pl. 51. cites 13 H. 7. 15.

4. If a Man be *attainted of Murder or Felony by Outlawry or otherwiſe*, and the King *pardons* him *all Felonies, Murders, and Executions thereof, and Outlawries and Waivings, and Suits of Peace, and* pardons and releaſes *all Forfeitures of Lands and Tenements, and of Goods and Chattels*; this ſhall ſerve only for the Life and for the Land, if no Office be thereof found, but *it ſhall not ſerve for the Goods without Reſtitution or Gift*; for the King is intitled to them by the Outlawry without Office, but the King is not intitled to the *Land* till Office be found; and if Office be found afterwards, yet the Pardon ſhall ſerve; for this ſhall have Relation to the Judgment, and then the Pardon Meſne ſhall ſerve well: Contra where *Office* is *found before the Pardon granted*; for then the King is ſeiſed by the Office, and there a *Releaſe or Pardon* cannot give it, but there *ought to be a Gift or Grant*; note the Diverſity. Br. Charters de Pardon, pl. 52. cites 29 H. 8.

2 Hawk. Pl. C. 387. cap. 37. S. 21.

5. A. being indicted for Murder, pleaded a Pardon of all Felonies, Offences &c. *before and until the 14th Day of February*, which was ſubſequent to the Time of the giving of the Wound, but *antecedent to the Party's Death.* It was adjudged that the Murder was pardoned; for the Wound given by the Priſoner was the *Commencement of the Felony*, and

was

was the Offence and Miſdemeanor againſt the Queen, which is pardoned by the Statute, and for that Reaſon *every Thing conſequent* thereupon. Pl. C. 401. Mich. 13 Eliz. Cole's Caſe.

6. Where a *Miniſter* was *deprived* for an Offence *Tempore Parliamenti*, and *the Offence was* afterwards *pardoned* by Parliament; and then the Parliament ended. The *Deprivation* was utterly *void*; for the Pardon relateth to the firſt Day, and the Party need not ſue to reverſe the Deprivation. Cro. E. 41. Trin. 27 Eliz. C. B. Fox's Caſe.

S. C. cited Cro. E. 789. Mich. 42 & 43 Eliz. C. B. in Caſe of Baker v. Rogers.—

S. C. cited 2 Hawk. Pl. C. 395. cap. 37. S. 53.

7. Upon an Appeal to the Arches Court, there was a *Sentence given for defamatory Words, and* 12 *d. Coſts*; and then came the General Pardon; and then the Defendant appealed to the *Delegates*, who affirm'd the laſt Sentence, with *greater Coſts*, not allowing the Defendant's Plea of the Pardon. Adjudged that theſe Coſts given by the Delegates were not taken away by the Pardon, being for the *Vexation* (which was ſubſequent thereto) tho' the *Original Offence* was pardoned. Winch. 125. Hill. 22 Jac. C. B. Davis v. Hawkins.

S. P. But if the Offence for which the Suit was in the Spiritual Court be pardon'd hanging an Appeal, and ſuch Pardon relate to a Time precedent to the Award of the Coſts, and after ſuch Pardon the Appellant deſert his Appeal, and the Spiritual Court award Coſts againſt him; in Reſpect of ſuch Deſertion it ſeems that he may have a Prohibition, becauſe the Pardon having diſcharged the Coſts, the firſt Suit, as well as the Offence, made the Appeal to be to no Purpoſe. 2 Hawk. Pl. C. 394. cap. 37. S. 43.

8. A. was libelled, and *ſentenced by the Eccleſiaſtical Commiſſioners, for aiding* and aſſiſting *B. to commit Adultery with C.* and for this Offence was *fined to the King, and injoined to do Penance* in the Church &c. On which A. prayed a Prohibition, and it was granted; for that by the *General Pardon* (which *came before the Sentence paſs'd*) the Offence was diſcharged, and conſequently the Sentence and Fine which came after were void; and it was held per Hutton J. That if *ſome of the Offences* charged on the Defendant were *committed after* the Pardon, yet the Sentence and Fine in this Caſe being *intire*, the Pardon ſhall be a Diſcharge thereof. Cro. Car. 113. Trin. 4 Car. C. B. Peel's Caſe.

9. A *General* Pardon by *Act of Parliament*, tho' made the laſt Day of the Seſſions, ſhall, like other Acts, *relate to the firſt Day of Seſſions*. But it is otherwiſe of a Pardon *of Grace*, and a *Special Pardon*, which ſhall relate only to the *Seal and Date of it*. Adjudged per Cur. Lat. 22. in Boſton's Caſe.

And therefore if there be an *Uſurious Contract*, and after begins a Seſſions of Parliament, and then a *Judgment on an Information* on the Statute of Uſury is given, and then a *General Pardon* comes; this Pardon, by its Relation to the 1ſt Day of the Seſſions, ſhall pardon the Judgment, tho' *ſubſequent* thereto: Otherwiſe it is, if after Judgment for the uſurious Contract, a *Special* Pardon is procured. Per Cur. Lat. 22. in Boſton's Caſe, cites 36 H. 2. 5.

10. The Defendant was indicted, and convicted on the Statute of Uſury; and on a Certiorari pleaded the Coronation Pardon, which was general, of all uſurious Takings and Contracts, *without Relation to any certain Time*; for this Reaſon it ſhall *not diſcharge the Judgment* which was *given before* the Pardon; but when the Pardon is of all Offences committed before ſuch a Day, there, tho' a *Judgment intervene*, it ſhall be diſcharged by the Pardon. Per Cur. Lat. 141. Davy's Caſe.

11. *Information for importing Gloves* contra Stat. 3 E. 4. cap. 4. The Caſe was, That the Gloves were imported before the 25th of March, to which Time the General Pardon extends, by which all unlawful Importations were pardoned; and in April following the ſaid Gloves were found in the Hands of the Defendant to be ſold. The *Queſtion* was, *Whether this Forfeiture was diſcharged by the General Pardon intervening between the Importation, and the finding them to be ſold?* But the Barons were divided; Turner Ch. B held, that the Forfeiture was not gone by

the Pardon; for he ſaid the Importation was not unlawful, and by it there is no Offence againſt the Statute, but it is the Selling or Deſign to Sell which gives the Forfeiture; but the other Barons ſeemed to be of the contrary Opinion, inaſmuch as the Selling is not the principal Offence, but it is Evidentia facti that the Importation was to that Intent, and ſo the Importation being pardoned, the Goods ſhould not be forfeited. And Thurland compared it to the Caſe where a Man is ſtruck, and dies in a Week after, the Death ſhall have Relation to the Stroke. And Sawyer put the Caſe, Suppoſing theſe Goods had been ſeiſed, and then the King had reſtored them, or ſuppoſe the King had releaſed to the Party, there they ſhould never be forfeited by any After-Sale again; notwithſtanding the Statute ſaith as often, and every Time they may be found &c. Freem. Rep. 325. 326. Paſch. 1674. in Scacc. Harling v. Cannon.

(U. a. 3) Private Pardon. To what the Words ſhall *extend.*

Br. Patents, pl. 102. cites S. C.

1. IF the King pardons *to the Alienee of his Tenant, who holds in chief, All Alienations*, by this the Tenant cannot alien, but by this the Fine for Alienation is pardoned, notwithſtanding that he did not pardon the Fine but the Alienation. Br. Charters de Pardon, pl. 26. cites 14 H. 6. 26.

The King's Pardon of all *Miſpriſions, Offences and Contempts*, pardons an *Offence againſt any Statute.* By all the Judges in the Exchequer Chamber. Jenk. 111. pl. 17. cites 37 H. 6. 4.

2. Sheriff made a Falſe Return, and the King Ex mero motu, ſpecial Gratia & certa Scientia, pardoned *all Miſpriſions, Offences and Contempts*; after this Pardon was obtained, the Judges of B. R. fined him 100 l. for this falſe Return; the Fine was eſtreated into the Exchequer, and the Sheriff was taken in Execution, and committed to the Fleet; he ſued a ſpecial Writ upon this Pardon in the Nature of an Audita Querela, compriſing all this Matter, and returnable in the King's Bench. Reſolved that the Patent by the ſaid general Words pardoned the ſaid Offence, and that becauſe the Pardon preceded the ſetting of the Fine, therefore the Fine may be [is] diſcharged. After Judgment, and before or after Execution, the King's Pardon diſcharges the Debt or Offence, and Execution of it, and is pleadable againſt the King. Jenk. 109. pl. 10. cites 36 H. 6. 24. Quatermain's Caſe.

But there was alſo in the Pardon *Omnimoda Demanda, Debita & Foriſfact.*

3. Information in the Exchequer *for Shipping of Wool to other Place than Calais*, againſt the Statute &c. the *Defendant pleaded Pardon of the King de ſecta Pacis*, which per Choke, is only Surety of the Peace, and all Actions which are Contra Pacem, and this Action is not Contra Pacem. Br. Charters de Pardon, pl. 24. cites 37 H. 6. 4.

And this is good. Ibid.

Br. Prerogative, pl. 62. cites S. C.

4. If the King pardons *Omnimoda Demanda*, yet *Inheritance is not pardoned*, quia Rex; and yet in the Caſe of a common Perſon, Rent, Right of Entry, and every Thing which is implied in it is determined; contra in Caſe of the King. Br. Releaſes, pl. 44. cites 6 H. 7. 15.

So a Pardon of a *Nuſance* does not extend to the *Continuance of the Nuſance* after the Pardon; for this Continuance is a new Nuſance, as the Incloſure is; for this is a Depopulation continued. Jenk. 198. pl. 13.

5. The King's Pardon of *all Offences and Miſdeeds, contra formam quorumcumque Statutorum*, extends to the Offence of *Incloſures* againſt the Statute of 7 *H.* 8. but it does not extend to the *Continuance of the Incloſure after the ſaid Pardon*, as of a Nuſance. Jenk. 198. pl. 13. cites 10 H. 8.

S. P. Jenk. 234. pl. 9.—

6. If the *Heir* of the King's Tenant *within Age*, enters and takes the Profits, and the King pardons him all *Intruſions*; this ſhall ſerve him for

for *Intruſions and Meſne Profits until Office found*, but not for the Iſſues afterwards, neither does it diſcharge him of Livery; but if he were of *full Age* when he ſo intruded, and obtains a Pardon of all Intruſions before Office found, this diſcharges him of Intruſion, Meſne Rates, and Livery. Jenk. 198. pl. 13. cites 10 H. 8. Keilw. 198. b. Mich. S.C. ſays it ſuffices till the Date of the Pardon; but for all the Time that he occupies after his full Age, he is chargeable to the King; but where Heir is of full Age at the Time of the Pardon, he ſhall go quit, becauſe the King has no Title to intermeddle with the Land after the Pardon; and ſo a Diverſity where the Heir is of full Age, and where within Age at the Time of the Pardon &c. quod nota. But the Reporter makes a Quære; for it ſeems that the Pardon made to the Heir, to whoſe Lands the King had once Cauſe of Wardſhip, ſhall diſcharge the Heir as well where he is of full Age, as where he is within Age at the Time of the Pardon; and that this Pardon countervails a Special Livery, and the Effect of a Special Livery is no other in Effect but Licentia ingrediendi &c.

7. A. purchaſed Land to him and Wife, and to his right Heirs; the Lands were held of the King in Capite; A. had no Licence; the King by a *Coronation Pardon pardoned A. Omnes Alienationes*, Tranſgreſſiones & Offenſas pro qualibet Alienatione ſibi fact. This Pardon pardons this Alienation; for the Word Alienation properly goes to the Fee, and a Coronation Pardon ought to have a favourable Conſtruction. By all the Judges of England. Jenk. 222. pl. 67. cites 3 Eliz. D. 196. Sir Robert Catlin's Caſe. Such Pardon will not ſerve where the Husband purchaſes to him and his Wife for their Lives. Ibid.

8. M. was attainted in a Premunire, and the King pardon'd him *Omnes & ſingulas Tranſgreſſiones, Offenſas & Contemptus*. And the Queſtion was, Whether by this Pardon the Judgment in Premunire was releaſed? And the Court, after giving M. ſome Advice to be more careful for the future, and to take Heed of running into ſuch high Offences, allowed the Pardon. 2 Bulſt. 299. Mich. 12 Jac. The King v. Sir Anthony Mildmay.

9. A. became bound to B. in a Statute of 10000 l. and after was found in Arrear to the Crown 22500 l. as Collector of the new Impoſt: Upon A.'s Death his Lands were extended for the King's Debt, which were afterwards granted by the King to J. S. in Truſt for C. A.'s Heir; then comes the Act of General Pardon 13 Car. 2. wherein *all Accounts of Receivers, Collectors* &c. are excepted; but it is provided, that the Heirs, Executors &c. of Accountants ſhall not be charged, except for *Sums remaining on Accounts already ſtated*. C. conveys to D. and afterwards in the Exchequer pleads the Pardon in Diſcharge of the Crown's Debt, which is confeſs'd by the Attorney General, and Judgment given accordingly: Upon an Ejectment againſt the Executor of B. who had extended the Lands upon the Statute for the 10000l. it was adjudged that the Word (*Accounts*) in the Exception of the Act of Pardon extended to *Sums due on Accounts ſtated*, as appears by the ſubſequent Proviſo, in Favour of the Heirs &c. of the Accountants, tho' properly a Sum due on an Account is not an Account, as was adjudged on the Statute of Limitations on the Words (Merchants Accounts.) 3 Lev. 135. Travell v. Carteret. And it was further reſolved, That this Debt to the Crown was not pardoned, notwithſtanding the Act excepts *the Accounts of all Receivers which have received any Subſidies, new Impoſt, or any Rents* of K. Ch. I. *after the 30th Day of Jan.* 1642. whereas this Money was received, and the Account ſtated in 1638. for that the Words *after the 30th January* 1642. relate only to thoſe next antecedent, viz. *Rents of King Charles I.* and the former Part of the Clauſe concerning the Accounts, ſhall be taken abſolutely *without any Limitation to the Time*; and that for two Reaſons. 1. Becauſe the Rebels in the Year 1642. begun to ſequeſter the Rents of the Crown. And 2dly Becauſe the Rents of the King is the *laſt Antecedent*, to which that which follows ought to relate. Per three Juſtices againſt Levins J. 3 Lev. 135. Mich. 35 Car. 2. C. B. Travel v. Carteret.

(U. a. 4) Pardon. Good. In reſpect of the Words. In *Criminal Caſes.*

1. A MAN was *convicted of Robbery at the Suit of the Party*, which *Party releaſed him the Execution*, and the *King reciting the Attainder*, *pardoned him the Execution*; and becauſe he *did not pardon the Felony by expreſs Words*, the Charter was diſallowed. And ſo it ſeems that the Party by the Pardon of the Plaintiff ſhall not go quit, without Pardon of the King; quod vide. Br. Corone, pl. 24. cites 8 H. 4. 22.

2. If *a Man kills another*, and the *King pardons all Felonies*, this ſhall not ſerve; for it ſhall be intended, that the King was deceived in his Grant, and did not know the Heinouſneſs; per Martin. Br. Charters de Pardon, pl. 19. cites 8 H. 6. 20.

Serjeant Hawkins ſays, It ſeems to be laid down as a general Rule in many Books, That wherever it may be reaſonably intended that *the King*, when he granted a Pardon of Felony, was *not fully appriz'd both of the Heinouſneſs of the Crime, and alſo how far the Party ſtands convicted thereof on Record*, the Pardon is void, as being gained by Impoſition on the King. And this is very agreeable to the Reaſon of the Law, which ſeems to have intruſted the King with this High Prerogative, upon a ſpecial Confidence that he will pardon thoſe only whoſe Caſe, could it have been foreſeen, the Law it ſelf may be preſumed willing to have excepted out of its general Rules, which the Wit of Man cannot poſſibly make ſo perfect as to ſuit every particular Caſe: And upon this Ground this Caſe was determined; but ſays that he was indicted by theſe Words, That he had ſlain a Man for having ſued him in the King's Court, which Brooke in his Abridgment of the Caſe omits. 2 Hawk. Pl. C. 383. cap. 37. S. 8.

S. P. Br. Patents, pl. 15. cites S. C. per Strange. —If a Man be *adjudged for Felony*, and after the King *pardons* him *all Manner of Felonies*, this is not good, becauſe he *did not pardon all Executions of Felony*. Per Choke J. quod non negatur. Br. Charters de Pardon, pl. 44. cites 6 E. 4. 4.

3. *And* per Strange, *if a Man be attainted of Felony by Outlawry or Verdict*, and the King pardons him all Felonies, this is not good for the Reaſon aforeſaid; and therefore it is uſual to mention *all Judgments, Executions, Pains and Penalties* of the ſame. Br. Charters de Pardon, pl. 19. cites 8 H. 6. 20.

But if it had been *Perdonavimus R. W. & alios ſupra de omnibus Feloniis factis* &c. *per prædictum R. W. vel per J. B. vel R. C. vel per alios* &c. this had been good; for this is ſeveral. Br. Charters de Pardon, pl. 51. cites 22 E. 4. 7.

4. Pardon was, *Perdonavimus R. W. J. B. R. C. de omnibus Feloniis, per prædictos R. W. J. B. R. C. vel per aliquos eorum fact.* And per Treamaile and Huſſey J. the Pardon is not good, becauſe *Felony* is ſeveral, and cannot be joint; and therefore, becauſe the Pardon is *joint in the Premiſſes*, it is not good, *tho'* it be *ſeveral in the ſubſequent*. And after Fairfax went to the Juſtices of C. B. for their Advice, who ſaid that it cannot be good as it is written; and after it was amended in the Chancery: But Brooke ſays he has heard that the Book is miſprinted, and contrary to the Record; for the firſt Pardon was good, by Reaſon of thoſe Words (Vel eorum aliquem) in the ſubſequent; quod nota. Br. Charters de Pardon, pl. 51. cites 22 E. 4. 7. ——— Serjeant Hawkins ſays it ſeems agreed, That the Pardon of A. B. and C. of all Felonies by them done, without adding, Or any of them, is void, becauſe it ſuppoſes them jointly Guilty, and extends to no other but joint-Felonies, whereas all Felony is ſeveral in each Offender, and cannot be joint. And the Year-Book of 22 E. 4. goes ſo far as to hold, that the Addition of the Words (Or any of them) will not help a Pardon beginning with ſuch joint Words; but it is ſaid to be miſreported, and contrary to the Roll, and ſeems to be agreed not to be Law at this Day. 2 Hawk. Pl. C. 388. cap. 37. S. 24.

5 A. commits Treaſon or Felony; the King's Pardon of *all Offences* does not pardon *Treaſon or Felony*: The Law requires, in the Pardon of Capital Offences, a *particular Mention* of the Nature of the Crime, Ne Maleficia remaneant impunita, and the King be deceived. A General Pardon of *all Felonies* is good for any Felony, but not for Treaſon. Where a Felon is attainted, a Pardon of the Felony will not ſerve him without a pardon of the Attainder alſo. Jenk. 197. pl. 5. cites 2 H. 8.

6. If

6. If the King pardons A. *a Felony whereof he ſtands indicted*, or *indicted* and attainted &c. and in Truth *he is not indicted* nor attainted &c. this is *Expreſſio falſi*, and makes the Pardon void 3 Inſt. 238.

7. D. was indicted of Felony and Murder, and prayed to have his Pardon allowed. Per Withens and Holloway, *Felonica interfectio* is well enough, tho' *Murdrum* be *omitted*; but the Ch. J. contra. Manſlaughter is Felonica interfectio, but at another Day (the Ch. J. being abſent) it was allowed. Comb. 39. Mich. 2 Jac. 2. B. R. The King v. Davies.

8. One outlawed in an Appeal of Felony, prayed his *Clergy*, which was *counterpleaded on Account of Bigamy* &c. and afterwards *purchaſed a Pardon*, and ſued Scire Facias againſt the Apellant &c. it is ſaid, that the *Pardon was not allowed, becauſe it made no Mention of the Bigamy*. 2 Hawk. Pl. C. 383. cap. 37. S. 8.

On the Debate of this Caſe it ſeems to be admitted, that the Pardon was not good, becauſe it made no Mention of the Bigamy; and yet it is ſaid, upon the Non-appearance of any one to maintain the Appeal, the Pardon was allowed; Ergo quære. 2 Hawk. Pl. C. 383 cap. 37. S. 8. Marg. cites 11 H. 4. 11. pl. 24 & 48. pl. 23.

(U. a. 5) Pardon. Good. In reſpect of the Words. In *Caſes not Criminal.*

1. IN Attaint the Defendant *pleaded Outlawry in the Plaintiff*, Judgment if he ſhall be anſwered; The *Plaintiff ſhew'd a Pardon*, which was, *Ita quod ſtet rectus in Curia*; by which Finch ſaid that therefore this is Conditional, and ſaid that where the Defendant recovered againſt the Plaintiff in the firſt Action, becauſe he has not made Gree to him, there the Pardon ſhall not ſerve. Fiſh ſaid the Pardon is not to be repealed by any, unleſs by you, and by our Suit we are to ſet aſide all the firſt Record; and therefore did not allow the Saying of the Defendant, but the Charter of the Plaintiff was allowed. Br. Charters de Pardon, pl. 34. cites 30 Aſſ. 20.

2. A Man was *bound in a Recognizance to keep the Peace*, and the *Defendant in Scire facias* upon the Recognizance *pleaded Pardon* of the King *of all Debts, Accounts and Recognizances*, and the Pardon *bore Date after the Recognizance, and before the Forfeiture*; and the Opinion of the Court was, that the Pardon is good; as Releaſe of an Obligation before the Day of Payment is good. Br. Charters de Pardon, pl. 17. cites 11 H. 4. 43.—Contra per Priſot. 37 H. 6. 4.

3. The King pardoned A. B. *omnimoda Debita* &c. *ex mero Motu & certa Scientia*; and after *Debt was demanded againſt him* in the Exchequer, *as Sheriff of C.* and *he pleaded this Pardon, with Suggeſtion that he was Sheriff* &c. And by ſome Juſtices the Pardon is not good; for it is not de Communi Gratia, nor General Pardon; and per Brian, Capi Debet juxta intentionem Regis, & non ad deceptionem Regis; and here he is not named Sheriff in the Pardon, and therefore it ſhall be intended his proper Debt, and not as Sheriff: But per Huſſey Ch. J. and ſeveral other Juſtices, the Pardon ſhall ſerve the Debtee as Sheriff in the firſt Caſe, becauſe it is ex mero Motu &c. for *it is a General Pardon*; but *Pardon made upon Suggeſtion or Ratione officii ſhall be taken ſtrictly according to the Letter*; but after the Pardon aforeſaid made to B. was allowed by the Barons of the Exchequer. Br. Charters de Pardon, pl. 36. cites 1 H. 7. 10.

The King *pardoned J. N. (Eſq; only) all Debts and Accounts*, and *he was Sheriff of N.* and becauſe it was *ex certa Scientia & mero Motu*, it was allowed without being named Sheriff. Br. Charters de Pardon, pl. 58. cit[illegible] 2 R. 3. 7.——*But* if J. N. be *indebted to the King by two Offices*, and *makes Executors*, and dies, and the *King pardons the Executors by their proper Names, Omnia Debita ſua*, and does not ſay Executoribus &c. this ſhall not ſerve them as Executors; per Brian. Ibid. Br. Charters de Pardon. pl. 36. cites 1 H. 7. 10.

4. If the King *grants to the Merchants to tranſport Wool without paying Cuſtom*, this is a good Pardon of the Cuſtom, per Juſticiarios; contra if

the King licences the Merchants to export Wool, and retain the Cuſtom, yet the Cuſtom ſhall be charged; for this is no Pardon in it ſelf; nota diverſitatem inde bene. Br. Charters de Pardon, pl. 68. cites 1 H. 7. 34.

But Pardon of *all Debts* is good by the King; and yet this does not extend to Joint-debts that this Perſon and another owe; and per Fairfax, this Pardon does not extinguiſh Relief of the King. Ibid.——*And* per Brian and Vaviſor, Pardon of the King *of all Actions* is not good. Ibid.

5. It was doubted if Pardon of the King *of all Manner of Demands*, be good or not. Br. Charters de Pardon, pl. 75. cites 11 H. 7. 10.

D. 286. pl. 42. Trin. 11 Eliz. cites S. C.

6. The Tenant of the King dies ſeiſed, and an Office is found accordingly, and the Heir had entered and taken the Profits before the Office found, and afterwards the King pardons *all Intruſions*; this is not good without theſe Words, *Iſſues and Profits* &c. Keilw. 88. b. Hill. 22 H. 7.

7. B. was *indicted for Striking in Weſtminſter-Hall* near the Side of the Bar of C. B. ſitting the Courts, and obtained his Pardon; and the Queſtion was, if it ſhould be allowed, becauſe it varied from the Indictment; for the *Indictment was*, *Verberavit vulneravit & percuſſit*, and the *Pardon omitted Percuſſit*; and yet good per Cur. for it is in the Recital, and if no Recital had been, yet it ſhould have been good, and *Vulner. is larger than Percuſſit*; but if it was not, there are general Words, viz. Omnia Malefic. in Indictamento prædict. contin. Sid. 211. Trin. 16 Car. 2. B. R. The King v. Bockman.

(U. a. 6) Pardon. Good. In Reſpect of the *Time of* the *Making*.

1. A Pardon *made by E. 4. before he was actually King*, was void even after he came to the Crown. Hawk. Pl. C. 36. cap. 17. S. 13.

2. If the *Tenant of the King diſſeiſes me, and dies, his Heir within Age*, and *I enter*, and the *King pardons me all Entries upon him*, and after *Office is found for him*, yet the Pardon is good; but *Pardon after Office found is void*; for he ought to traverſe, or make Petition or Monſtrans de Droit, Per Choke J. But Per Markham, the Pardon is not good before the Office nor after, which Brooke ſays does not ſeem to be Law; for it ſeems that it is a good Pardon. Br. Charters de Pardon, pl. 43. cites 5 E. 4. 4.

But if he *pardons* him *after the Office found*, the *Fine for the Entry* is *not* pardoned, per Philpot; but per Morton, After Office found he ought to have Special Pardon; quære. Br. Charters de Pardon, pl. 48. cites 16 E. 4. 1.

3. Tenant of the King dies ſeiſed, and his *Heir enters without Livery*; Per Philpot, if the King *pardons him before Office found of the Intruſion*, then the Intruſion and the Iſſues are pardoned. Br. Charters de Pardon, pl. 48. cites 16 E. 4. 1.

4. The *Heir before Office found may diſtrain the Tenants*, and Pardon made to him before Office of Intruſion found is good, but Office may be found after, notwithſtanding the Pardon; but this ſhall not ſerve the King but for the Profits before the Office, per Huſſey. Br. Charters de Pardon, pl. 39. cites 3 H. 7. 3.

Br. Patents, pl. 51. cites S. C.

5. The King may pardon Things which are in *Pœnam Pecuniariam before the Act done*; contra of voluntary Eſcapes, Felony &c. Br. Charters de Pardon, pl. 41. cites 3 H. 7. 15.

(U. a. 7) *What* the King may pardon.

1. 2 *Ed.* 3. 2. *Charters of Pardon for Manſlaughters, Robberies, Felonies, and other Treſpaſſes, ſhall not be granted but where the King may do it ſaving his Oath, viz. where one Man killeth another in his own Defence, or by a Misfortune.* This Statute is confirm'd by 4 *Ed.* 3. 13. *and* 10 *Ed.* 3 2. *and* 14 *E.* 3. 15.—The King may pardon *Murder*, tho' he cannot diſpenſe with it; per Hales Arg. March 213. Trin. 18 Car. in Rickebie's Caſe.—Holt Ch. J. ſaid there was as good Reaſon why the King ſhould pardon an Indictment of Murder, which is his Suit, as why the Subject ſhould diſcharge an Appeal, which is the Suit of the Subject; and that the King was by his Coronation Oath to ſhew Mercy as well as to do Juſtice. And he ſaid that this Statute of 2 *E* 3. *cap.* 3. *meant only that the King ſhould be fully informed before he pardoned any Felony*; and that the Reaſon of that and other reſtrictive Statutes was, for that after the Statute of Glouceſter, cap. 9 upon a Murder done, it was uſual to apply to the Lord Chancellor, and obtain a Pardon by undue Means and falſe Suggeſtions, with general Words in it; and this was the Occaſion of thoſe reſtrictive Statutes, that Application be made to the King in Perſon, to the Intent the King himſelf might be appris'd of the Matter. 2 Salk. 499. Hill. 3 W. & M. B. R. The King v. Parſons.—S. P. 4 Mod. 63. Mich. 3 W. & M. B. R. in Caſe of the King v. Anonymus.

Serjeant Hawkins, after reciting this Statute, and adding that it is confirmed by ſeveral ſubſequent Statutes, ſays, That there being no Precedent in the Regiſter of a Pardon of any other Homicide, but ſuch as is done either in Self-Defence, or by Miſadventure, or by Infants or Madmen, ſome have gone ſo far as to hold, that the King's Pardon of any other Homicide is not good, unleſs it be confirmed by Parliament, or at leaſt have a Non obſtante. But the Serjeant ſays this ſeems contrary not only to the general Tenor of the Books, which clearly admit the King's Power to pardon any Homicide in general, but alſo to the expreſs Purport of 13 R. 1. which by ſhewing in what Form the King ſhall make a Pardon of Murder, plainly allows that he has a Power to make it: Beſides, the ſame Reaſons hold as ſtrongly againſt the King's Power to pardon Manſlaughter as Murder, which yet he ſays he never knew diſputed. However, it ſeems reaſonable, that thus much at leaſt be allowed to follow from the Arguments above mentioned, that too great Caution cannot well be taken in the Grant of Pardons of any Homicide, that there be ſome ſuch favourable Circumſtances in Extenuation of it, as may bring it ſome Way within the Equity of the Caſes in the Regiſter, and theſe old Statutes. 2 Hawk. Pl. C. 385. cap. 37. S. 14.

2. In *Appeal* by the Party of the Death of his Father, the King cannot *pardon the Execution*; quod nota. Br. Appeal, pl. 150. cites 14 E. 3. In Appeal of Death, Robbery, Rape &c. the King cannot pardon the Defendant; for the Appeal is the Suit of the Party to have Revenge by Death, and whether the Defendant be attainted by Judgment &c. or by Outlawry, the Pardon of the King ſhall not diſcharge the Defendant. 3 Inſt. 237.

Serjeant Hawkins ſays, A Pardon of the King will not be any *Bar to an Appeal*, except only where it is *carried on at the Suit of the King after the Nonſuit of the Party*, in which Caſe it may be barr'd by a Pardon, in the ſame Manner as an Indictment. 2 Hawk. Pl. C. 392. cap. 37. S. 35.

3. In *Attaint* by A. againſt the Party and the Petit Jury; *againſt the Party to have Reſtitution*; this the King *cannot* pardon; *againſt the Petit Jury* by the Common Law, that they ſhould loſe Liberam Legem &c. this the King *may* pardon, becauſe it is a Puniſhment exemplary to deter others, and tendeth not to the Reſtitution or Satisfaction of the Plaintiff. 3 Inſt. 237. cites 13 E. 4. 5. *S. P. 2 Salk. 689. Paſch. 7 W. 3. B.R. The King v. Crosby.

4. The King cannot pardon the *Duty of the Party*. Br. Charters de Pardon, pl. 24. cites 37 H. 6. 4. Br. Action Popular, pl. 3 cites S. C

——Wherever an Act of Parliament gives a particular Intereſt, or Right of Action to the Party grieved by the Breach of it, as the Statutes of Mortmain, which give an Entry to the next immediate Lord for an Alienation to a Corporation, the Statutes againſt Maintenance, Forcible Entries, Carrying Diſtreſſes out of the Hundred, Suffering one in Execution to eſcape &c. which give an Action to the Party grieved by the Offence prohibited, it ſeems to have been always agreed, that no Charter by the King can be of any Force to bar the Right of the Party grounded upon ſuch Statute, becauſe it is a ſettled Rule, that the King cannot prejudice the Intereſt of the Party 2 Hawk. Pl. C. 390. cap. 37. S 29.

5. *And* where the King *grants* to me *all Fines and Amerciaments in ſuch a Place*, the King cannot pardon them. Ibid. Tho' the King has *granted Fines* to a Corporation, he may however pardon the *Offence*. Reſolved per Cur. Skin. 676. Hill. 8 W. 3. B. R. The King v. Bowerbank.

6. *Before*

Br. Charters de Pardon, pl 24 cites S. C.—— S P. Br. Charters de Pardon, pl. 13. cites 1 H. 7. 3. For after Action brought, the Party is intitled to his proper Debt. —— Br. Action Popular, pl 4. cites S. C.

6. *Before Popular Action brought, the King may pardon* all the Forfeitures and Pains; *but after* Information or Action brought, the *King cannot pardon but only his own Part*, and not the Part of the Party. Br. Action Popular, pl. 3. cites 37 H. 6. 4.

Serjeant Hawkins says he takes it to be a settled Rule, That the King may *pardon any Offence whatever*, whether against the Common or Statute Law, *so far as the Publick is concerned* in it, after it is over, and consequently may prevent any Popular Action on a penal Statute, by a Pardon of the Offence before any Suit commenc'd by an Informer. 2 Hawk. Pl. C. 391. cap. 37. S. 33 —— He also takes it to be a settled Rule, That the King *cannot* by any Dispensation, Release, Pardon, or Grant whatsoever, *bar any Right*, whether of Entry or Action, *or any legal Interest*, Benefit or Advantage whatsoever, *before vested in the Subject*; and that upon this Ground it seems clear, that the King can no Way bar any *Action on a Statute by the Party grieved, nor* even a *Popular Action* by a common Informer, if *commenced before his Pardon* or Release. 2 Hawk. Pl. C. 392. cap. 37. S. 34.

Contra, if it be *after the Peace broken*. Ibid.—S. P. Br. Charters de Pardon, pl. 76. cites 11 H. 7. 11. 12.——Br. Recognizance, pl. 22. cites S. C. per Fineux quod non negatur.——S. P. 12 Rep. 30. cites 11 H. 4. 30. 37 H. 6. 4. 1 H. 7. 10.——S. P. 2 Hawk. Pl. C. 392. cap. 37. S. 34.——The King cannot pardon or release a *Recognizance of the Peace before it is broken*, because the Subject has a Kind of Interest in it. Hawk. Pl. C. 129. cap. 60. S. 17.——S. P. 3 Inst. 238.

7. If a Man be *bound in a Recognizance to keep the Peace*, and the King *pardons him*, or releases *before the Peace broken*, this is not good. Br. Charters de Pardon, pl. 24. cites 37 H. 6. 4. per Fortescue.

Br Quirzime, pl. 7. cites S. C. Br. Chose in Action, pl. 7. cites S. C. —Br. Grants, pl 111. cites S. C.

8. Where *a Tenth is granted* to the *King*, and he *assigns Tallies to his Creditors*, and *they shew them to the Collectors* now the King is discharged, and the Collectors are charged to the Creditors; and therefore after this the King cannot pardon the Collectors, nor those of the Clergy who granted the Tenth; for it is compared there to a Grant of a Rent over with Attornment; quod nota. Br. Charters de Pardon, pl. 37. cites 1 H. 7. 8.

9. *Malum Prohibitum is all that which is prohibited by Statute, which was lawful before*, as Shipping of Wool beyond Sea &c. and *Malum in se* is that which is ill and unlawful, and which the King cannot grant Licence to do, and yet may pardon it afterwards; as for killing a Man or making a Nusance &c. the Licence is not good, and yet after it is done, the King may pardon it; but with Malum Prohibitum the King may dispense, as of Alienation in Mortman, Shipping of Merchandize &c. Br. Charters de Pardon, pl. 76. cites 11 H. 7. 11. 12.

10. The King may pardon *a Clerk Convict remaining in the Bishop's Prison without making Purgation*, for this is all Temporal; per Fineux Ch. J. quod nemo negavit. Br. Charters de Pardon, pl. 21. cites 15 H. 7. 9.

D. 201. b. S. P. Dubitatur.—— In such a Case the Defendant pleaded the Queen's Pardon, and prayed to have it allowed; and a Precedent was shewn, Pasch. 8 Eliz. Rot. 33 Musgrave's Case, where the Defendant pleaded the Queen's Pardon in this very Case, and it was allowed; altho' in 9 Eliz. Dyer 261. there was a Quære thereof; but Popham said it was a strong Precedent, for it is hard that the Queen should pardon that which is the Suit of the Party; and there is no Question if it had been an Appeal of Homicide, as it well might, the Queen could not have pardoned it, whereto Coke the Queen's Attorney of Counsel with the Defendant agreed; for it is meerly the Suit of the Party. Cro. E. 465. Trin. 38 Eliz. B. R. Penryn v. Corbet——Cro. E. 632. Mich. 40 & 41 Eliz. in Case of Shackborough v. Biggins, it is said that Musgrave's Case was there cited, and the Record viewed, and no Judgment therein.——But 5 Rep. 50. Trin. 31 Eliz. Biggin's Case, in Appeal, it is said that it was resolved, upon Conference with diverse other Justices, that the King may pardon the *Burning in the Hand*; for that it appears

11. In *Appeal of Death* the Plaintiff counted *of Felony and Murder ex Insidiis, Insultu & Malitia præmeditatis & præcogitatis* &c. The Defendant pleaded Not Guilty to the Felony and Murder, and by Nisi Prius was *found Not Guilty of Murder, but Guilty of Death*, viz. *of felonious Killing* &c. And it is left a Quære whether the Queen may pardon the Burning in the Hand; for *the Imprisonment* she cannot pardon, inasmuch as it *is the Execution of the Party* in the Appeal. D. 261. pl. 26. Pasch. 9 Eliz. Turner v. Cuthberd and Musgrave.

pears by the Statute of the 4 H. 7. 13 that Burning in the Hand was only to notify to the Judge hereafter, whether the Defendant has had his Clergy before, or not, and ſo no Part of the Judgment; for if it were, the King could not pardon it, becauſe the *Plaintiff has an Intereſt in the Judgment*; and ſince the King has pardoned the Burning in the Hand, he thereby pardons the *Impriſonment* by Conſequence; for the 18th Eliz. provides, that after the Allowance of the Clergy and Burning of the Hand, the Priſoner ſhall immediately be ſet at large; and if the Pardon, by diſcharging the Burning of the Hand, ſhould prevent his being diſcharged, it would defeat the Intent of that Statute, and occaſion a *perpetual* Impriſonment; and thereupon the Defendant was diſcharged.—3 Inſt. 237. cites Trin. 40 Eliz. S. C. by Name of **Shugborough** v. **Buggins**, where Lord Coke ſays, It was reſolved by the Juſtices, upon Conference between them, that the Queen might pardon the Burning of the Hand; for that it is no Part of the Judgment at the Suit of the Party Plaintiff in the Appeal, but is a collateral and exemplary Puniſhment inflicted by the Statute 4 H. 7. cap. 13.——But note, that this Caſe is reported Cro. E. 682. Trin. 41 Eliz. C. B. by the Name of **Shuckborough** v. **Biggen**, where it appears that *no Judgment was given* therein, but that the Court was equally divided, and that the Caſe at laſt ended by *Compromiſe*.——And in Mo. 571. S. C. by Name of **Stroborough** v. **Biggin**, it is ſaid to be agreed that the King *cannot* pardon the *Burning of the Hand* in an Appeal, becauſe it was at the Suit of the Party, and that thereupon the Matter was *compounded*, which is likewiſe confirmed by Raymond J. in his Reports 369. in **Teller**'s Caſe, who ſaid he had *examined* Biggen's Caſe, and he held, that the Burning in the Hand was Part of the Judgment; for the Entry is, *Quod le Offender cauterizetur in manu ſua leva*.——But Cro. C. 596. Mich. 16 Car. B. R. in Sir **Matthew Dint**'s Caſe, the King pardoned the Burning in the Hand, and the Pardon was allowed——And 11 Mod. 254. Trin. 8 Ann. B. R. in Caſe of **Smith** v. **Bowen**, the Court was of Opinion that the Statute that gives the Clergy extended to Appeals, and that the Burning in the Hand being no Part of their Judgment, the Queen might pardon it, according to **Biggin**'s Caſe. 5 Co. 50. And thereupon the Appellee was diſcharged without Bail, being pardoned by an Act of Grace.

Serjeant Hawkins ſays, It is holden by great Authorities, that if a Perſon be convicted of Manſlaughter upon an Appeal of Death, the King may pardon the Burning in the Hand; for which this Reaſon is given by Sir Edward Coke, That it is * no Part of the Judgment at the Suit of the Party, but a Collateral and exemplary Puniſhment inflicted by the Statute of 4 H. 7. 13. But this is made a Quære by others; and the principal Caſe wherein it is ſaid to have been reſolved, is very differently reported, and was never adjudged; and the Ground laid down that the King may pardon it, becauſe it is no Part of the Judgment at the Suit of the Party, (by which it ſeems to be admitted, that if it were Part of the Judgment the Law would be otherwiſe) ſeems rather to make againſt it than for it; for there are Precedents of expreſs Judgments Quod cauteriſetur in manu ſua leva. Alſo it is admitted, That where a Defendant is to have a certain Impriſonment &c. at the Suit of the Party upon a Statute, the King cannot diſpenſe with it, except in ſome ſpecial Caſes, wherein it may be reaſonably intended that ſuch *Impriſonment* was given *by Way of Satisfaction to the Publick Juſtice*, in which Caſe it ſeems agreed, that the King may diſpenſe with it, as it is ſaid he may with finding of Sureties by one convicted on the Statute againſt Treſpaſſes in Parks. But it ſeems doubtful whether the Statute of 4 *H.* 7. 13. which appoints the Burning of the Hand, can well admit of ſuch a Conſtruction, for the Words are, *Whereas upon Truſt of the Privilege of the Church, divers have been more bold to commit Murder, becauſe they have been admitted to their Clergy as oft as they have offended; for avoiding of ſuch preſumptuous Boldneſs it is enacted, That every Perſon not being in Orders, who hath once been admitted to his Clergy, be not again admitted thereto; and that every ſuch Perſon convict* &c. ſhall be mark'd &c. From whence it ſeems plain, that the Statute expreſsly intends ſuch Marking as a Diſcouragement of the Offence; and it ſeems difficult to give a Reaſon why it ſhould be conſtrued to mean it only as a collateral, and not as a direct Puniſhment; neither does it ſeem a plain Reaſon, That becauſe the Statute intended it as an exemplary Puniſhment, the King may diſpenſe with it; for ſurely the Execution of an Appellee attainted of Murder, and the perpetual Impriſonment of a Clerk delivered to the Ordinary upon a Conviction on an Appeal, who could not make his Purgation, were alſo exemplary Puniſhments; and yet it is generally agreed, that the King never could diſpenſe with them: And therefore upon the whole, this ſeems to be a Point that deſerves to be farther conſidered. 2 Hawk. Pl. C. 393. cap. 37. S 39.——* Lord Hobart, fol. 294. ſays, That it is no Part of the Judgment, or ſo much as in Nature of Puniſhment, but only a Mark to notify that the Party may have his Clergy but once. Ibid in Marg.

12. J. T. being a *Copyholder* to the Lord Cromwel of his Manor of N. *forged a Cuſtomary* of the ſaid Manor; and it was proved to be done wittingly, ſubtlely and falſely, and to the Intent &c. And this was held to be Forgery within the Statute 5 Eliz. and *Judgment was given* accordingly in the Star-Chamber; and after this Judgment the *Queen pardoned the Execution of the Corporal Puniſhment.* And it was held by Wray Ch. J. Saunders Ch. B. Harper and Manwood J. præter Barham and Gerrard Attorney, that the Queen may pardon the Corporal Penance which trenches in common Example &c. But Dyer, Southcote and Mounſon e contra. D. 322. b. 323. a. Mich. 15 Eliz. in the Star-Chamber. Taverner's Caſe.

3 Inſt. 171. cites S. C.—S. C. cited Cro. E. 682. Trin. 41 Eliz. in Caſe of **Shuckborough** v. **Biggen**, by Popham, who ſaid it was good Law; for the *Suits in the Star-Chamber are by Information*, which is properly the *Suit of the Queen*, and not of the Party; and therefore the Queen may pardon it, but not when he is convicted in an Action at the Party's Suit; and ſo

he ſaid was the Opinion of divers Juſtices with whom he had conferr'd——But if one be attainted of Forgery *in an Action upon the Statute* of Forgery, the Queen cannot pardon the Puniſhment. Per Popham. Cro. E. 682. Trin. 41 Eliz. C. B. S. C.

S. P. Hawk. Pl. C 394. cap. 37. S 41. ——S. C. cited Dav. Rep. 73. a. in the Caſe of Commenda.——S. P. Hob. 81. 82. Trin. 13 Jac. in Caſe of Cuddington v. Wilkins.

13. In all *Caſes* depending *between Party and Party in Court Chriſtian*, where the Suit is only *pro ſalute animæ vel reformatione morum*, as for Defamation, or laying violent Hands upon a Clerk, or the like, there the *Pardon* of the King, *is a Bar of the Suit*; For the *Suit* is not to recover any Damages, or any other Thing, but *only to inflict Puniſhment* upon the Offender pro ſalute animæ, which Puniſhment the King may pardon as well before as after the Suit commenc'd; for in Truth ſuch Suits are only for the King, tho' they are proſecuted by the Party. Reſolved 5 Rep. 51. a. Trin. 2 Jac. C. B. in Hall's Caſe.

——*So* of Suits in the *Star Chamber* preferr'd *by any Subject againſt another*, the King may pardon them; for tho' a Subject proſecutes them, yet the Suits are for the King, and to puniſh the Defendants for their Offences by Impriſonment and Fine &c. to the King. Reſolved 5 Rep. 51. in Hall's Caſe.——S. P. 2 Hawk. Pl. C. 394. cap. 37. S. 41.——3 Inſt. 238. cites S. C.——S. P. Hob. 82. Trin. 13 Jac. in Caſe of Cuddington v. Wilkins——*So* all *Proceedings in the Eccleſiaſtical Court ex Officio*, are for the King; therefore whatſoever the Suit is there the King may pardon them; for they *are only to correct or puniſh the Party for the Offence*, which the King may pardon, and not for the particular Intereſt of the Party. Reſolved 5 Rep. 51. b. in Hall's Caſe.——S. P. 2 Hawk. Pl. C 394. cap. 37. S. 41.——*But* if one *libels for Tithes*, or *Contract of Matrimony*, *or* for *Legacy*, or the like, *where the Plaintiff has Intereſt* and Property in the Thing in Demand, and Sentence be given for him for the Thing for which he libels, there the King cannot pardon this neither before nor after the Suit commenced. Reſolved 5 Rep. 51. a. in Hall's Caſe.——S. P. 2 Hawk. Pl. C. 394. cap. 37. S. 42.

2 L. P. R. 270. Tit. Pardon, cites S. C—— S. P. 2 Hawk. Pl. C. 394. cap. 37. S. 41. 42.—So of Suits in the Star-Chamber after Sentence given and Coſts tax'd for the Party, the Pardon ſhall not diſcharge them; *but if the Pardon had been obtained before Sentence*, there the Pardon had diſcharged all; for then the Court could not have proceeded to any Sentence of the Principal, and by Conſequence not of Coſts, which are only Acceſſary. 5 Rep. 51. a. b. Hall's Caſe.—It was alſo reſolved, that tho' the *Defendant had appealed*, by which the Sentence to divers Purpoſes (by Opinion of the Doctors of the Law Spiritual) is ſuſpended, as appears in 27 H. 6. Tit. Gard. 118. 2 R. 2. Tit. Quare Impedit 143 1 H. 7. 12. 2 Mar. 105. Yet by the firſt Sentence the Party (notwithſtanding the Appeal) has an Intereſt in the Coſts, which cannot be diſcharged by the Pardon of the King; and therefore as to this Purpoſe, the firſt Sentence is not ſuſpended by the Appeal. And after Conſultation was granted for the Coſts. Ibid.

14. Alice C. libelled againſt R. H. in the Court Chriſtian for Defamation, for calling her *Whore*, and had *Sentence, and Coſts were taxed.* Et decretum fuit quod predictus R. H. foret movendus & citandus ad ſolvend. expenſ. citra tale feſtum. Which Sentence the Defendant appealed from, and before the ſaid Feaſt R. H. obtained a Pardon of the King, and thereupon obtained a Prohibition out of C. B. And it was reſolved that tho' the Suit be for the King, and which the King may pardon, yet when Sentence is given, and Coſts taxed for the Plaintiff, *now the Plaintiff has a particular Intereſt in them* by the Sentence, which the King cannot pardon, tho' Day be given for the Payment of them, as above. 5 Rep. 51. a. b. Trin. 2 Jac. C. B. Hall's Caſe.

Vaugh. 333. 335—— *S. P. Br. Nuſance, pl. 15. cites 37 H. 6. 4. And that the King cannot pardon a *common Nuſance*.

15. The King cannot pardon *the not repairing a* * *Bridge or Highway*, becauſe the *Subject has an Intereſt* in them. It is true he may † pardon *Fines for the Time paſt*, but not for the Time to come, for the Offence itſelf cannot be pardoned; but for the Time after the Offender ſhall be fined. And ſo in Caſe of *Depopulation*. 12 Rep. 29. 30. Trin. 5 Jac. Anon.

——† Br. Charter of Pardon, pl. 24. cites 37 H. 6. 4.——S. P. 3 Inſt. 237.——*So* of *Nuſances in the Highway*, they cannot be pardoned *till removed*, tho' they are only *Mala Prohibita*. But the *Fine or Puniſhment impoſed* for the Doing may be pardoned. *So* of a *Water-courſe diverted*; per Vaughan Ch. J. Vaugh. 333.

Serjeant Hawkins ſays, That while a *Publick Nuſance* continues unreform'd, it ſeems agreed that the King cannot wholly pardon it, becauſe ſuch Pardon would take away the only Means of compelling a Redreſs of it But it has been holden by ſome, that a Pardon of ſuch Offence will ſave the Party from any Fine for the Time precedent to the Pardon. 2 Hawk. Pl. C 391. cap 37. S. 33.

16. Both the *Damages and Impriſonment in Treſpaſs upon the Statute Weſt* 1. *cap.* 20. concern the Plaintiff; and therefore the King's Pardon cannot

cannot diſpenſe with them; but the *Ranſom*, the *finding Surety*, *and the Forejuring of the Realm*, are Puniſhments exemplary, and concern the King; and therefore he may pardon them. 2 Inſt. 200.

17. M. was *impeached by the Houſe of Commons*, *and* by Judgment in the Houſe of Lords, *was diſabled to hold any Spiritual Preferment*. The King afterwards, under the Broad Seal, *pardoned him all Treaſons*, *Felonies*, *Diſabilities &c.* but *without any Recital* therein *of the Judgment in Parliament* againſt him. He was afterwards made Biſhop of St. Aſaph. It was argued, whether or no this Diſability is pardonable by the King? This Point was not adjudged; but ſee the Arguments Pro & Con. Hard. 154. to 157. Paſch. 1659. Thorowgood v. Herbert.

18. P. being *convicted of Murder*, *obtained his Pardon*, *and* being brought to the Bar, *pleaded it*, *and produced his Writ of Allowance*, and the Pardon had in it the Word *Murdrum*. And it was held by the whole Court, that this Pardon was good, and ought to be allowed; for that the King might at the Common Law have pardoned Murder, and that appears by thoſe very Statutes which limit his Power in that very Particular; and the Drift of thoſe Statutes are no more than that the King ſhould not be ſurprized by pardoning it by general Words; and therefore *ſince* the making of *thoſe Statutes*, *a Pardon of Felonies* &c. *would not* extend to *pardon Murder without a Non Obſtante*; but if the King would recite the particular Fact, as he had done here, the Pardon would be good without a Non Obſtante: Therefore it ſeems a Pardon in general Words was good, without reciting the Fact and Proceedings particularly, as in this Caſe the Indictment, Conviction and Attainder were all recited. Freem. Rep. 501. 502. Mich. 1691. Parſons's Caſe.

2 Salk. 499. Hill. 3 W. & M. B. R. S. C. by Name of the King v. Parſons.

19. Holt Ch. J. took this Difference, *Where the Diſability is only the Conſequence of the Judgment*, the King may pardon it, *but where* the Diſability is *Part of the Judgment* itſelf, the King's Pardon will not take it away; therefore * if a Man be convict of *Perjury on the Statute*, the King's Pardon will not reſtore him, for it is not a Conſequence, but Part of the Judgment, viz. Quod impoſterum non ſit receptus ut teſtis. But a Pardon by Act of Parliament will reſtore him in that Caſe; quod nota. Quære of a Perjury *at the Common Law*; and if the Law be not the ſame; for there the Diſability is only by Conſequence, and not Part of the Judgment. 2 Salk. 689. Paſch. 7 W. 3. B. R. The King v. Crosby.

* If a Man be convicted of Perjury at Common Law, the King may pardon him, but if upon the Statute he cannot; per Holt Ch. J. Carth. 422. in Caſe of the King B. R. S. C.

v. Greep.—2 Salk. 514. Mich. 9 W. 3.

20. Where *Beheading* is Part of the Judgment, as in Caſe of High Treaſon, the *King may pardon all the reſt*, and conſequently in ſuch Caſe the Judgment may be well executed by Beheading only. 2 Hawk. Pl. C. 463. cap 51. S. 5.

(U. a. 8) Pardon. Obtained how. Suggeſtion, and Proceedings.

1. PArdon was pleaded, that *the King for his Service done in Gaſcoigne pardoned him*; and it was allowed; but he was *detained till it was certified whether he did ſuch Service there*, *or not*. And ſo ſee that the *Conſideration* upon which the Pardon is obtained *is material*. Br. Charters de Terres, pl. 74. cites Itin. Canc. 6 E. 2. 7.

2. 27 *E.* 3. *Stat.* 1. *cap.* 2. *Pardons which have not in them the Suggeſtion whereupon they are granted*, *and alſo the Suggeſtors Names*, *ſhall be void*; *ſo are thoſe likewiſe which are granted upon falſe Suggeſtions.*

Becauſe Kings had been deceived by falſe Suggeſtion,

Suggeſtion, and had thereupon diſpenſed with formet Statutes, with a Clauſe of Non Obſtante inſerted in the Pardons, therefore this Statute was made. Arg. 4 Mod. 62. Mich. 3 W. & M. B. R. in Caſe of the King v. Anonymus.

Lord Coke ſays, The Party who does not inform the King truly, is not worthy of his Grace and Forgiveneſs; and therefore either Suppreſſio veri or Expreſſio falſi avoids the Pardon. 3 Inſt. 238.

H. and others were indicted of Murder, and pleaded a Pardon, which recited all the Proceedings upon the Indictment; and then the King was informed, that there was no Evidence given that there was any Malice prepenſe in them, in other Manner than by Conſtruction and Implication of Law, and for that the King pardoned the Killing and Felony &c but no Word of Murder was in it but by Deſcription; and the Court were troubled to hear ſuch a Suggeſtion in the Patent, becauſe they knew the contrary to be true; and therefore they ſaid that upon ſuch a Pardon a Scire Facias might be brought 7 Years hence, and they might be hang'd notwithſtanding this Pardon; and therefore they adviſed H. to procure a better Pardon: And Windham J. ſaid, that the Suggeſtion of the Pardon might have been grounded on the Merits of the Priſoners &c. but upon this Pardon the Priſoners had not produced any Writ of Allowance; and therefore the Pardon was not allowed, but their Execution reſpited till another Day, at which Day they produced a Patent without any Suggeſtion at all, and a Writ of Allowance, but the Date was miſtaken, and did not agree with the Writ; and therefore Execution was reſpited over. Raym. 13 Paſch. 13 Car 2 B. R. Howard's Caſe.——Sid. 41. S C.

3. *5 H. 4. 2. If an Approver commit Felony after he is pardoned, he that procured his Pardon, ſhall forfeit* 100 *l. whoſe Name ſhall alſo for that Purpoſe be inſerted in the Pardon.*

4. If a Man be arraigned of *Murder*, and it be *found* that he killed the Party *Se Defendendo*, he ought to ſue a *Certiorari to remove the Record into the Chancery*; *and* upon the Removal thereof *to have his Pardon.* F. N. B. [247] (F.)

5. And if a Man be *attainted* in Aſſiſe of Novel Diſſeiſin, before the Juſtices of Aſſiſe, *of a Diſſeiſin with Force, and be* afterwards *outlawed for the King's Fine*, if he will have a Pardon of the Outlawry, he *ought to have a Certiorari* directed *to the Juſtices of Aſſiſe, to certify the* King in his *Chancery the Tenor of the Record* of the Aſſiſe, *and alſo another Writ* to the Juſtices, *to certify* the King in his Chancery *whether the Defendant in the Aſſiſe hath yielded himſelf to Priſon, and hath ſatisfied the Party his Damages.* And if the ſame be ſo certified in the Chancery, then upon that Certificate he ſhall have his Pardon of the Outlawry. F. N. B. [247] (G.)

6. And if a Man be *condemned in C. B. in Debt, and outlawed upon the ſame*, then before he ſhall have his Pardon, he *ought to yield himſelf to the Priſon of the Fleet, and ſatisfy the Party*; and the *Record of his Condemnation, and* of the *Satisfaction, ought to be certified by* Certiorari unto the King *in* his *Chancery*, and thereupon he ſhall have his Pardon; and that is by the Statute 5 E. 3. cap. 12. F. N. B. [247] (G.)

7. *And* if a Man be *outlawed ſeverally, at the Suit of three ſeveral Perſons in ſeveral Actions* in which he was condemned, he ought to ſue a Certiorari to remove the Tenor of thoſe Records and Proceſs into the Chancery, and alſo to have a Certiorari to the Juſtices of the Common Pleas, if the Suit be there, to certify the King in Chancery whether he hath yielded himſelf to the Priſon of the Fleet, and hath ſatisfied the Parties; and when the Chief Juſtice hath certified the ſame into Chancery, then he ſhall have his Pardon for the Outlawries, and not before. F. N. B. [247] (G.)

(U a. 9) Pardon. Allow'd in what Caſes.

See (U. a. 10)

1. WHERE the *Baron is Outlaw'd*, and the *Feme goes without Day*, and the Baron purchaſes Pardon and Scire Facias thereupon, he ſhall not have it allowed without *bringing in his Feme.* Per Thorp. Br. Charters de Pardon, pl. 6. cites 40 E. 3. 34.

But where *Baron and Feme were outlawed*; and the *Baron purchaſed* Charter of *Pardon.*

It was held that he may ſay *that the Feme is dead, or* that *he had no ſuch Feme*, and ſhall have his Charter allowed; for he cannot have it allowed without bringing in his Feme, without ſuch ſpe-

cial

cial Matter ſhewn. Br. Charters de Pardon, pl. 64. cites 13 E 4. 5.—— *But* where the *Baron and Feme* are *outlawed*, and *ſhe appears and ſhews Charter of Pardon*, and the Baron does not come, the Charter ſhall not be allowed, becauſe ſhe cannot plead without the Baron; but ſhe ſhall go at large; nota. Br. Charters de Pardon, pl. 18. cites 11 H. 4. 89.——Br. Baron and Feme, pl 36. cites S. C.

2. In Formedon the *Tenant pleaded Outlawry* in the Demandant, and he *imparl'd*, and *the next Day brought Charter of Pardon, bearing Date after his Imparlance*, and the *Tenant ſaid that the Charter is upon Condition* that he ſue againſt C. D. at whoſe Suit he was outlawed, which he has not done, Judgment &c. and yet becauſe the Demandant is now at the Law, the Opinion of the Court was againſt the Tenant; by which he vouch'd. Br. Charter de Pardon, pl. 7. cites 44 E. 3. 27.

3. 13 R. 2. 1. *In a Pardon the Offence committed ſhall be ſpecified, otherwiſe it ſhall not be allowed.*

If the Offence pardoned be afterwards found Wilful Murder, the Pardon ſhall not be allowed.

D. was indicted of Murder, and obtained a General Pardon of all

Murders, Robberies, Felontes &c. Non obſtante the Statute of 13 R. 2. or any other Statute. And the Court inclined that this Pardon ſhould not be allowed; for after the ſaid Statute a general Non obſtante would not ſerve, without Recital of the Effect of the Indictment upon which he is convicted, to the Intent that the King might be apprized of the Offence. And tho' it was the Opinion in Ricabit's Caſe, that the King could not pardon Murder, yet it has never been doubted either before or after, but that the King could pardon it, with a ſpecial Recital of the Fact and Non obſtante; but without ſuch Recital the Pardon is not good. And they directed that it ſhould be argued for the Priſoner, if he would; but he perceiving the Opinion of the Court, endeavoured to obtain a new Pardon with ſpecial Words. Sid. 366. Trin. 20 Car 2. B. R. The King v. Dudley ——A general Non obſtante, without a particular Recital of the Crime for which the Party is convicted, is not good ſince the making of the Statute of R. 2. but at the Common Law, both before and ſince that Statute, the King may pardon Murder, with ſpecial Recital of the Fact, Non obſtante that or any other Statute. Per Cur. 4 Mod. 63. Mich. 3 W. & M. B. R. The King v. Anonymus.

4. A Man was *attainted at the Suit of the Party of Robbery*, and the *Party pardoned him the Execution*, and the *King, by Charter which recited the Attainder, pardoned the Execution*; and becauſe no Mention was expreſs'd of the Felony, therefore it was diſallowed; quod nota. And ſo it ſeems that he ſhall not eſcape by Pardon of the Party only; and often *where the Party will not proſecute the Suit*, the Party *ſhall be arraigned upon the Declaration for the King*. Br. Charters de Pardon, pl. 13. cites 8 H. 4. 22.

2 Hawk. Pl. C. 384. cap. 37. S. 12. cites S. C. But the Serjeant ſays, It does not appear how this Pardon was pleaded, nor to what

Purpoſe it was attempted to be made Uſe of, nor how far, or in what Reſpect it was diſallowed; and therefore tho' ſome Books ſeem to hold generally upon the Authority of this Caſe, that ſuch a Pardon is no Way good, yet the Serjeant ſays he does not well ſee how any more can be proved from it than this, That it ſhall neither amount to a Pardon of the Felony it ſelf, nor of any other Conſequence of the Attainder, beſides the Execution. But he ſays it ſeems difficult to give a Reaſon why it ſhould not well pardon the Execution, ſince the King does not appear to be any Ways deceived; and it has been clearly adjudged that the King may, if he think fit, pardon the Execution, and no more.

5. Scire facias ſhall *not* be granted *for the Defendant againſt the Plaintiff in Appeal* upon the Pleading of the Pardon of the King *after Conviction and Judgment*, if he *does not ſhew Releaſe*, or ſuch like; per Huls; quod non negatur. Br. Scire facias, pl. 73. cites 11 H. 4. 16.

6. *Felon ſhall not* be ſuffered to *relinquiſh a General Pardon* by Act of Parliament, and to plead to the Felony; per Cur. *But* yet *he ſhall anſwer of the Goods*, but they will not arraign him of the Felony. Br. Charters de Pardon, pl. 16. cites 11 H. 4. 41.

S. P. For every one ſhall take Notice of the Act of Parliament.

Br. Corone, pl. 30. cites S. C.——Where *Felons are pardoned by Act of Parliament*, there the *Juſtices ought to take Notice thereof*, becauſe it is a general Act; ſo that if a Priſoner will plead Not Guilty, yet they ought to ſurceaſe to arraign him, and allow the Pardon; quod nota. Br. Charters de Pardon, pl. 1. cites 26 H. 8. 7.——Br. Parliament, pl 1. cites S. C.——S. P. Tho' he be ſo far from pleading it, or praying the Benefit of it, that he does all he can to waive it. 2 Hawk. Pl. C. 397. cap. 37. S. 61.—— Serjeant Hawkins ſays he takes it to be agreed, That a General Pardon by Parliament cannot be waived, becauſe no one by his Admittance can give a Court a Power to proceed againſt him, when it appears there is no Law to puniſh him. 2 Hawk. Pl. C. 396. cap. 37. S. 58.

Jenk. 169. pl. 29. cites 2 H. 7. Fitz. Re-attachment 13. S. C. and adds, That this Pardon ſhall be *allowed without awarding a Scire facias againſt the Appellant*; for it appears on Record, that the Appeal is extinct, and it would be in vain in this Caſe to award a Scire facias by the Juſtices of both Benches. Lex nil facit fruſtra.

7. If *Appeal be without Day by Demiſe of the King*, there, if the *King pardons the Defendant*, and the *Plaintiff does not bring his Re-attachment within the Year* to revive the Appeal, the Pardon ſhall be allowed. Br. Charters de Pardon, pl. 69. cites 2 H. 7. 10.

8. H. was convicted of *Manſlaughter, and had his Clergy*, and pleaded his Pardon, whereby the *Burning in the Hand* for the Manſlaughter, and all other Felonies by him committed, Et alia Malefacta before the 8th July laſt *were pardoned*; and there was a *ſpecial Clauſe that he ſhould not find Surety* for his Good Behaviour; and the Pardon bore Date 31ſt October laſt; and tho' there were divers Miſdemeanors committed by him after the ſaid 8th July, for which he deſerved to be bound to the Good Behaviour, yet he had his Pardon allowed, and was diſcharged from finding Sureties &c. Cro. C. 596. Mich. 16 Car. B. R. Sir Matthew Mint's Caſe.

Raym. 13. S. C.

9. H. and others were indicted of *Murder*, and found Guilty, and *Judgment was given, but Execution was ſuſpended.* And after they were brought to the Bar, and demanded what they could ſay why Execution ſhould not be done; and they *pleaded Pardon* of the King *ſub Magno Sigillo*; and the Court refuſed to allow it, becauſe there *ought to have been a Writ de Allocanda perdonatione* directed to the Juſtices: And Mallet J. ſaid, The Reaſon why ſuch Writ ought to be directed was, *becauſe it was the Warrant which remained in Court for the Juſtices* to allow the Pardon. And after at another Day the Pardon was read to the Court, and H. had brought a Writ directed to the Juſtices to allow it; and upon reading the Pardon, the Court ſaid they would be adviſed; and they ſaid that the *Suggeſtions* in it were *falſe, and therefore they would ſtop the Allowance. And* Twiſden J. ſaid, that in the Time of Hide Ch. J. an Allowance of a Pardon was ſtopp'd, *becauſe there was a Non Obſtante that the Party ſhould not find Surety of the Peace.* Sid. 41. Paſch. 13 Car. 2. B. R. Howard's Caſe.

See (U. a. 9) (U. a. 13)

(U. a. 10) Pardon. Allowed, How.

S.P. 2 Hawk. Pl. C. 398. cap. 37. S. 66.

1. NG. was *indicted of the Death of R. Anno* 13. *E.* 2. and he *ſhewed by Record that R. was dead Anno* 9 *E.* 2. *and* ſhewed *Pardon of his Death teſted* 12 *E.* 3. and becauſe it might be that two R.'s were killed, therefore Scrope awarded Inqueſt of Office to inquire if there was found any R. Anno 13. after the Pardon; and it was found Quod non, by which he went quit, and the Pardon allowed; quod nota; notwithſtanding great Variance; quod mirum mihi. Br. Charters de Pardon, pl. 29. cites 3 Aſſ. 15.

2. Charter of Pardon was granted to a Man who was *outlawed* at the Suit of the Party *upon Action de Muliere abducta cum bonis Viri, becauſe the Plaintiff came and confeſs'd of his own Free-will*; but in B. R. when they came there, they were in Doubt to allow it, becauſe the Party came into Chancery to confeſs of his own Free-will, *without Scire facias or Day in Court*, and therefore they doubted if they ſhould award Scire facias now in B. R. *for it does not appear if he be the ſame Perſon, or not*; and yet at laſt they allowed the Charter, and the Acceſſory had not thereof Advantage; quod nota: The Reaſon ſeems to be inaſmuch as all are Principals in this Action. Br. Charters de Pardon, pl. 35. cites 42 Aſſ. 16.

3. *He*

3. *He who is outlawed, and has Charter of Pardon, ſhall not compel the Plaintiff to Count againſt him*, tho' he be ready at the Bar; becauſe he has not Day in Court, and therefore was compelled to ſue Scire facias. Br. Charters de Pardon, pl. 8. cites 46 E. 3. 15. Br. Scire facias, pl. 207. cites S. C.

4. *Several* were *outlawed in Appeal by Feme, of the Death of her Husband*, and the *one came with* Charter of *Pardon of the King, and had Scire facias* againſt the Plaintiff, and was *returned warned, and did not come*, by which he went quit; and after *another came with ſuch a Pardon, and went quit by the firſt Default of the Feme*; for in this Caſe they are *attainted by the Outlawry, and ſhall not plead upon the Original*, and nothing remains but to be put to Execution. Br. Charters de Pardon, pl. 14. cites 9 H. 4. 1. But Ibid. pl. 47. cites 8 E. 4. 13. and 9 H. 4. accordingly. Contra, That in B. R. *a Feme brought Appeal againſt Four*, at whoſe Suit they were *outlawed*, and *one ſued Charter of Pardon, and had Scire facias* againſt the Feme, which was returned ſerved, and *ſhe did not come*, by which he went quit; and *another ſued Charter of Pardon*, and he was compelled to have *another Scire facias* per Cur; quod nota.——And agreeable hereunto is Serjeant Hawkins, who ſays that the ſecond ſhall take no Advantage of the Appellant's Default on the firſt Scire facias, but muſt ſue out his Scire facias &c. in the ſame Manner as if there had been no ſuch Default. 2 Hawk. Pl. C. 393. cap. 37. S. 38. cites in Marg. 1 H. 4. 1. pl. 2. Fitzh. Scire facias 63. but ſays that Br. Charter de Pardon, pl. 14. in the Abridgment of the ſame Caſe holds the contrary.

5. But *contra in Treſpaſs*; for the ſecond ſhall have Scire facias upon his Charter, becauſe they *may plead upon the Original*. Br. Charters de Pardon, pl. 14. cites 9 H. 4. 1.

6. It was ſaid, that if *Writ of Allowance* of a Charter of Pardon of Felony *be ſhewn* to the Juſtices, *and not the Pardon it ſelf*, this ſhall not ſerve. Br. Charters de Pardon, pl. 42. cites 5 E. 4. 132. *Contra where the Pardon* it ſelf *is ſhewn, but no* Writ of *Allowance*. Ibid.

7. *Debt by the King upon an Obligation*, the *Defendant pleaded Not his Deed*, and *found againſt him by Niſi Prius*, and before the Day in Bank the King pardoned him; he cannot plead this by Attorney; for *by the Judgment the Warrant* of Attorney of the Defendant *is expired*; and therefore he appeared in Perſon, and pleaded it in Perſon, and he pleaded it to the Execution without Day in Court; for if it was againſt a common Perſon, he might have Scire facias ad cognoſcendum Factum, or Audita Querela, and make him give Day in Court, and then to plead his Releaſe; but ſuch Actions, nor any others, do not lie againſt the King. Br. Charters de Pardon, pl. 4. cites 34 H. 6. 3. & 50. and 35 H. 6. 1. 25. Br. Attorney, pl. 11. cites S. C.

8. Appeal of *Robbery*; the *Defendant was outlawed, and got Charter of Pardon and Scire facias againſt the Plaintiff* in the Appeal *returnable* &c. *without ſhewing Releaſe of the Plaintiff*; and well; for it is uſual without ſhewing Releaſe. Br. Charters de Pardon, pl. 59. cites 2 R. 3. 8. *And* if the Party be *returned warned, and does not appear, make Attorney* the Pardon ſhall be allowed. Ibid.——*And* in this Scire facias the Plaintiff *ſhall not againſt him who is outlawed.* Ibid.——*Contra upon Iſſue of Bigamy.* Ibid.

9. Note, by the Opinion of all the Juſtices, where *a Clerk convict has Charter of Pardon*, he *ought to have ſpecial Writ*, rehearſing all the Matter, *and the Pardon directed to the Ordinary, to make him come before the Juſtices to have his Pardon allowed*; quod nota: and Clerk convict or attaint ſhall be enabled by Pardon, per Fineux; quære of Clerk attaint. Br. Charters de Pardon, pl. 27. cites 21 H. 7. 31.

10. If one have a Charter of Pardon for Felony committed by him, the Court ought to allow it *upon the Prayer of the Party that hath it*; but he *muſt produce it* at the Bar, *and pray upon his Knees* that it may be allowed. 13th November 1650. B. S. for if he produces it not, the Court cannot take Notice of it, and if he pray not the Allowance of it, the Court cannot tell whether the Party do accept of the Benefit of it; and he does it on his Knees to expreſs his Thankfulneſs for the Mercy afforded him by the Pardon. 2 L. P. R. 271. Tit. Pardon.

11. If

11. A Pardon *of Felony with a Clauſe of Tranſportation* was *allowed*, and the Party diſcharged *without finding Sureties*; but per Aſtry, the uſual Courſe is to inſert the Clauſe for finding Sureties to tranſport himſelf within ſuch a Time; but per Cur. he *ought to tranſport himſelf within the Time at his Peril*; and therefore it was allowed &c. Comb. 16. Paſch. 2 Jac. 2. B. R. Anon.

12. 5 & 6 *W. & M.* 13. *The Act of* * 10 *Ed.* 3. 2. *for finding ſix Mainperners or ſubſtantial Perſons to be bound for the Good Behaviour of a Perſon who is pardoned for Felony, is hereby repealed: And it is enacted, that if a Pardon be pleaded for Felony, the Court may, at their Diſcretion, remand or commit the Perſon to Priſon, there to remain till he enters into a Recognizance with two ſufficient Sureties for his Good Behaviour for any Time not exceeding 7 Years.*

Provided, that if ſuch Pardon be pleaded by a Feme Covert or Infant, ſuch Feme Covert or Infant may find two Sureties to enter into a Recognizance for them.

* A *Man outlawed of two ſeveral Felonies two ſeveral Years* was taken and compell'd to anſwer to both, and *pleaded Pardon of them*; and becauſe he *found Surety according to the Statute* 10 *E.* 3. de bene gerendo, and after *made an Affray upon J. N.* the Pardon was void, and another Judgment was given upon him, that he ſhould be Hang'd by the Neck; and he was executed. Br. Corone, pl. 133. cites 3 H. 7. 7.——This ſeems to be Clark's Caſe cited Mo. 466. pl. 662. in Cole's Caſe, where one indicted of Burglary [and convicted] was afterwards guilty of a Breach of the Peace, and upon ſuggeſting the ſame to the Court, and praying Execution to be done upon him, it was ſaid by Ive Clerk of the Crown, that Whiddon was hang'd in the Queen's Time for the like Cauſe, after Pardon; and that the Pardon was conditional, viz. Ita quod ſe bene geſſerit verſus cunctum Populum Dominæ Reginæ. Mo. 466. Paſch. 39 Eliz.

13. If one who appears to be *attainted of Felony*, whether by Outlawry or otherwiſe, *on an Appeal* carried on *at the Suit of the Party, get a Pardon* from the King, he *muſt ſue a Scire facias* againſt the Appellant, before the Pardon ſhall be allowed, unleſs the Appellant appear gratis, and confeſs that he will ſue no farther &c. 2 Hawk. Pl. C. 392. cap. 37. S. 35.

(U. a. 11) Pardon. Allowed at what Time.

1. UPON the *firſt Nihil returned* upon Scire facias upon Charter of Pardon of *Outlawry*, the *Plaintiff ſhall not be received to Count*; contrary upon the ſecond Nihil. Br. Scire facias, pl. 45. cites 48 E. 3. 1.

General Pardon was pleaded to diſcharge an Outlawry *after Judgment*, and not allowed till the Parties were agreed.

2. A Charter of *Pardon of Felony* being ſhewed to the Court, ſhall be *allowed after Judgment* upon an Indictment, and Execution ſhall not be done. De Vita Hominis nulla eſt cunctatio longa. Jenk. 137. pl. 82. cites 21 E. 4. 72. Toth. 136. cites Tr. 1590. Weekes v. Newborow.

3. The Court *refuſed to allow* a Pardon *till the Priſoner had paid his Fees*, ſcil. Gloves to the Judges, and alſo to the Officers, according to Sir John Bell's Caſe. 4 E. 4. 10. b. And the Clerk ſaid that the Fees were ready, upon which the Pardon was read. Sid. 452. Paſch. 22 Car. 2. B. R. The King v. Webſter.

Before that the Defendant in Meſne Proceſs can have the Benefit of this Pardon, he muſt *pay Coſts* of the Outlawry to the Plaintiff, tho' there is no Mention of any Thing but his appearing and putting in Bail.

4. 2 *W. & M. Seſſ.* 1. *cap.* 10. *No Proceſs of Outlawry at the Suit of any Perſon Plaintiff, ſhall be ſtaid, unleſs the Defendant* appear and put in Bail where the Law requires it, *and take out a Scire facias; nor ſhall this Pardon diſcharge any Outlawry after Judgment, till Satisfaction or Agreement with the Party.* 2 Vent. 210.——And Pollexfen Ch. J. ſaid, that the Practice had been ſo upon the General Act of Pardon 25 *Car.* 2. 5. And yet in that Statute the Clauſe concerning Outlawries is to the ſame Purpoſe, and no Mention made of the Coſts of the Party. Ibid.

5. A

5 A Pardon *for Treaſon* cannot be pleaded until the Priſoner be *charged with the Indictment* for the Offence committed; for before he is charged by the Indictment, it doth not appear to the Court that he is the Perſon that is pardoned by the Pardon. 2 L. P. R. 270. Tit. Pardon.

6. Where a *Pardon of* the *felonious Killing* of J. S. has been *pleaded to an Indictment of Manſlaughter by the Coroner's Inqueſt*, the Court in Prudence has *refuſed to allow it till* the Fact has been *found Manſlaughter only by a Jury directed by a higher Court.* 2 Hawk. Pl. C. 386. cap. 37. S. 18.

(U. a. 12) Pardon. Allowed upon what Return to the Scire facias.

1. IN *Account*, the *Defendant was outlawed, and got Pardon*, and had *Scire facias againſt the Plaintiff*, who was *returned Nihil*, and the *Pardon was allowed* upon a Nihil returned, and he went quit. Br. Retorn de Briefs, pl. 109. cites 21 E. 3.

But by 40 E. 3. *Sicut alias iſſued*, and the like is 19 E. 3. Ibid. —Br. Charters de Pardon, pl. 5. cites 40 E. 3. 1. ſays, It is agreed that the Plaintiff ſhall be *returned warned*, *or* returned *twice Nichil*, or otherwiſe the Charter ſhall not be allowed, and that upon two Nichils, or one Garniſhment of all the Plaintiffs, it ſhall be allowed.

2. *Treſpaſs by three*, the *Defendant was outlawed*, and ſued *Charter of Pardon* and *Scire facias againſt the Plaintiffs*, the *Sheriff returned one warned*, and the *other Nihil*; and the Defendant prayed Allowance; & non allocatur; for two are not warned, nor is there more than one Nihil returned, but he *ſhall have Scire facias alias*, and there, *if the Sheriff returns Nihil again*, the Charter ſhall be allowed, for he who was warned did not come; Note, that *two Nichils countervail Scire feci.* Br. Scire facias, pl. 14. cites 40 E. 5. 1.———And in the next Caſe there, it was agreed, that if upon the Scire facias the Sheriff *returns the Plaintiff dead*, the Defendant ſhall go quit; quod nota. Ibid.

Br. Charters de Pardon, pl. 5. cites S. C.

3. *Two* were *outlawed in Debt at the Suit of two*, and *one* of the Outlaws *ſued Charter of Pardon*, and had Scire facias againſt the Plaintiffs, and the *one was returned warned, and did not come*, and the *other Nihil*, by which the Defendant would have gone quit, becauſe the Default of the one Plaintiff in Debt ſhall be a Nonſuit of both, & non allocatur; but he *was compelled to ſue Sicut alias againſt him who was returned Nihil, and Idem dies to the other*; and if he ſhould be *returned Nihil again*, then the Charter ſhould be allowed; quod nota. Br. Scire facias; pl. 46. cites 48 *E.* 3. 3.

Brooke makes a Quære, if *at the Day* all *the Plaintiffs come, and* this *Defendant who had ſued his Charter, and the other not*, if they might

count againſt this Defendant, who appeared without the other, for he ſays in the Action of Debt they cannot; but by the Reporter, when it comes to this Point, the Outlaw ſhall have *Idem dies by Mainprize, till the other has ſued his Charter of Pardon*, and *then to count againſt both.* Br. Scire facias, pl. 46. cites 48 E. 3. 3.——Br. Default, pl. 12. cites S. C.

4. Where Scire facias upon Charter of Pardon upon *Outlawry at the Suit of Executors* was *returned ſerved at the Alias againſt the one, and not* ſerved *againſt the other*, yet the Plaintiff was compelled to *count againſt him*; otherwiſe in Debt brought by other Perſons. Br. Scire facias, pl. 57. cites 3 H. 4. 10.

Br. Executors, pl. 44. cites S. C. Brooke ſays the Reaſon ſeems to be, inaſmuch as

Executors may be ſummoned and ſevered, and he who comes firſt by Diſtreſs ſhall anſwer.

4. *Treſpaſs againſt three*, who are *returned Outlawed upon erroneous Proceſs*, and the *one had Charter of Pardon*, and Scire Facias againſt the

Br. Scire facias, pl. 65. cites S. C.—

Br. Utlawry, pl. 7. cites S. C.—— And in Appeal, if the Defendant is outlawed, and ſues Charter of Pardon and *Scire facias againſt the Plaintiff who is returned dead*, another Scire facias ſhall not iſſue againſt the Heir of the Plaintiff, but the Charter ſhall be allowed, and he diſcharged; quod nota. Br. Charters de Pardon, pl. 28. cites 38 H. 6. 13 ——Br. Scire facias, pl. 149. cites S. C.

Plaintiff, who *is returned dead*; the Charter ſhall be allowed, and when *the other has Charter of Pardon*, he ſhall have it allowed without ſuing Scire Facias; for it appears to the Court that the Plaintiff is dead. Br. Charters de Pardon, pl. 61. cites 7 H. 4. 30. and 9 H. 4. 7.

6. Scire facias againſt the Plaintiff an Abbot; upon *Outlawry and* Charter of *Pardon* granted to the Defendant, who was outlawed at the Suit of the Plaintiff, the *Sheriff returned*, That *the Plaintiff* was *depoſed before the coming of the Writ*, and the Defendant went quit Sine Die; quod nota at the firſt Scire facias, and yet it is not returned ſerved. Br. Scire facias, pl. 145. cites 1 H. 6. 2.

S. P. Br. Charters de Pardon, pl. 63. cites 1 H. 6. 2.

7. *Debt by J. Abbot* of W. againſt D. till the *Defendant is outlawed, and ſued Charter of Pardon* againſt the Abbot, the *Sheriff returned that before the Teſte of the Sci. fa. the ſaid J. Abbot was, and yet he is depoſed, and another elected per quod ipſum Scire facere non poteſt per nomen J. Abbot prout breve Exigit*; and a good Return, and the Charter allowed; for it amounts to as much as Mortuus eſt, for it is a civil Death. *Contra* upon ſuch Scire facias *againſt Baron and Feme*, and the *Sheriff returns that they are divorced*; for Perſons divorced may be warned; contra of dead Perſons. Br. Charters de Pardon, pl. 2. cites 2 H. 6. 5.

8. Debt by a Dean and Chapter, the *Defendant was outlawed, and ſued Scire facias upon Charter of Pardon*, which was returned ſerved, and the Plaintiff did not come, and the *Defendant ſurmiſed that the Dean is dead after the laſt Continuance*; and becauſe the Plaintiff's Attorney could not deny it, the Charter was allowed. Br. Charters de Pardon, pl. 56. cites 11 H. 6. 1.

9. In *Appeal of Death*, the *Defendant was outlawed*, and *got Pardon* of the King, and had *Scire facias againſt the Appellor without ſhewing Releaſe*, or other Thing; and yet divers Books are, that he ſhall not have Scire facias, without ſhewing Writing or other Thing, which will bar the Plaintiff of Execution. Huſſey agreed, that the Scire facias lay well, without ſhewing any Thing; and the *Sheriff returned* upon the Scire facias, *that the Appellor is dead*; and therefore per Judicium, the Pardon was allowed without ſuing Scire facias againſt the Heir; for the Suit is given to him who is Heir to the deceaſed, who has no Feme, add if this Heir dies, his Heir, ſcil. the Heir of the Heir ſhall not have Appeal nor Execution; for it is an Action which dies with the Perſon. Br Scire facias, pl. 166. cites 9 H. 7. 5.

See (U. a. 10)

(U. a. 13) Pardon. Writ of Allowance neceſſary in what Caſes.

1. NO *particular Pardon*, be it at the Coronation or any other, of any Offences whatſoever, that is abſolute *without any Condition* &c. *need any Writ of Allowance*; but when the Pardon is conditional by Force of the Act of 10 E. 3. cap. 2. there a Writ of Allowance out of Chancery, teſtifying that the Condition is performed, viz. Surety found according to that Act, may be had, or the Party may plead the finding of Surety &c. and vouch the Record. 2 Inſt. 234. cites Hill. 26 E. 3. coram Rege. Rot. 21.

2. H. was indicted of *Treaſon*, and produced the Queen's Pardon, without any Writ of Allowance thereof; and Pope, ſecond Clerk of the

the Crown, informed the Court, that the Precedents were, that in Caſe of Treaſon it was uſual to allow the Pardon without any Writ of Allowance, but not in Felony. Whereupon the Pardon was allowed. Cro. E. 814. Paſch. 43 Eliz. B. R. Sir Henry Linley's Caſe.

3. A Pardon was pleaded without a *Writ of Allowance*; and the Court ſaid, that if there had been a *Non obſtante* in the Pardon, in this Caſe they would have allowed it without ſuch Writ. Sid. 41. Paſch. 13 Car. 2. B.R. Howard's Caſe.

4. C. was *outlawed for Murder*, and brought a *Writ of Error* to reverſe it, which being done, he was forthwith arraigned, and *pleaded his Pardon under the Great Seal*, in which there was a *Non obſtante for his not finding Sureties* for his Good Behaviour. Per Holt Ch. J. the Pardon ought not to be allowed, without a *Writ of Allowance* directed to the Judges of this Court, out of Chancery, *teſtifying that he has found Sureties* before the Coroner and Sheriff &c. according to the Statute. But by the other Judges, the Pardon ought now to be allowed without any Writ of Allowance, becauſe the Party hath *three Months given by the Statute after the Pardon to find Sureties, under the Penalty that his Pardon ſhall be void*, if he does not do it. Nota, That afterwards in the ſame Term the Writ of Allowance was brought into Court, and upon Prayer &c. it was recorded under the Pardon. Carth. 120. Paſch. 2 W. & M. B. R. Cooke's Caſe.

5. Pardon of Murder is conditional, viz. The *finding Sureties*, and there muſt be a *Writ of Allowance*, ſignifying the Performance of that Condition; and 'tis not meerly at the Peril of the Party; for we ought not to give a final Judgment upon Ignorance of its Performance. Per Holt Ch. J. Show. 283. Mich. 3 W. & M. The King v. Parſons.

S. P. per Holt Ch. J. *but a Pardon for Treaſon* may be pleaded *without any Writ of Allowance*, becauſe that is abſolute. Freem Rep. 502. Mich. 1691. S. C. by Name of Parſons's Caſe —While the Statute of 10 E. 3. 2. ſtood in Force, Pardon of Felony could not be allowed without a Writ out of Chancery, commonly called a Writ of Allowance, teſtifying that the Party had found Sureties &c. according to that Statute, unleſs it were diſpenſed with by a Clauſe of Non obſtante; but the Neceſſity thereof is taken away by 5 & 6 W. & M. 13. which has repealed the ſaid Statute of 10 E. 3. 2 Hawk. Pl. C. 398. cap 37. S. 70.

6. M. pleaded his *Pardon*, and being ask'd for his Writ of Allowance, it was anſwered, that it had been *allowed in the Old Bailey*; and after ſome Debate it was *allowed here, without a new Writ*. Comb. 230. Mich. 5 Ann. B. R. Sir Richard Manſel's Caſe.

(U. a. 14) Pardon. Advantage thereof taken by whom, when, and how.

See (U. a. 16) (Q. a. 2) (Q. a. 3)

1. A MAN *ſtruck a Juror*, by which it was *awarded that his Hand be cut off*, and the *King granted his Land to another*; and after the *King pardoned him the Amputation of his Hand and Impriſonment, and whatſoever to him belonged*, and then *the Offender* died; and the Heir brought Scire facias againſt the Patentee, and re-had his Land. Br. Charters de Pardon, pl. 70. cites 41 E. 3. 25.

2. A Man was *bound in one Obligation by Name of R. T.* and *in another by Name of J. S.* and was *outlawed upon both, where his Name was R. T.* and *ſued Charter of Pardon thereof by Name of J. S.* only; and it was allowed, and he went quit of the other, for it cannot be intended the ſame Perſon. Br. Charters de Pardon, pl. 3. cites 3 H. 6. 25. Br. Miſnomer, pl. 4. cites S. C.

3. Where *two are appealed, and* are *outlawed*, and *ſue ſeveral Charters of Pardon*, they ſhall have ſeveral Scire facias's. Br. Scire facias, pl. 177. cites 8 E. 4. 13. Br. Charters de Pardon, pl. 47. cites S. C. and 9 H. 4. accordingly.

4. If

In the Star-Chamber the Rule was, not to allow Defendants the Benefit of a General Pardon *at the Hearing of the Cauſe*, unleſs they *prayed it by their Anſwer in* Court; and the Reaſon is, becauſe it does not appear to the Court, that they are not Perſons *excepted* in the Act. Obiter. Mo. 770. Dagg v. Penkevell, cites a like Caſe of Jener v. Waden, and Wentworth v. Wade.

4. If a Delinquent in the *Star-Chamber pleads Not Guilty*, he ſhall not have Benefit of the General Pardon *at the Hearing*; for he *ought to plead the Pardon, and to aver in Fact that he is not any of the Perſons excepted*, or otherwiſe the Court is not to allow him the Pardon. By the Opinion of both the Ch. Juſtices, to which the Lord Keeper agreed. Mo. 619. Mich. 42 & 43 Eliz. in Caſe of Blake v. Allen.

5. A. was outlawed after Judgment, before the General Pardon of the 43 Eliz. and after the Pardon died. Upon which his *Executors make Satisfaction*, which is confeſs'd of Record, and plead the General Pardon, with an Averment that they are none of the Perſons excepted therein. It was reſolved that the *Executors* may take Benefit of it; for the Act is, That *all the King's Subjects, their Heirs, Succeſſors, Executors and Adminiſtrators* ſhall be acquitted &c. which is to be expounded beneficially for the Subject. And tho' the Proviſo is, that the Act ſhall not extend to any Perſon *outlawed on any Writ* of Ca. Sa. *till Satisfaction or Agreement made with the Party*, yet the Act veſts ſuch an Intereſt in the Perſon outlawed, that tho' he dies, yet his Executors may make Satisfaction, and have Benefit of the Pardon. Per Cur. 6 Rep. 79. b. Trin. 5 Jac. C. B. Sir Edward Phitton's Caſe.

6. *Bill* was exhibited in the Star-Chamber *againſt C. and* ſeven or Eight-ſcore *Dutchmen, for Buying and Tranſporting* of ſundry *great Sums of Money.* The Defendants pleaded in Bar Not Guilty, and afterwards in their Rejoinder pleaded the Pardon by Parliament 7 Jac. which extended to Buying of Money, but not to Tranſporting. And upon this a Queſtion aroſe, Whether ſo many of the Defendants at were *neither Naturaliz'd nor Indenizen'd* were capable of the Pardon. And it was argued, that the General Pardon in the Preamble, and in all Parts, uſeth the Words of *Loving and obedient Subjects*; whereupon the Ch. J. did in a Manner expreſsly hold them out of Relief. But Lord Hobart ſays he avoided that Queſtion, as being not neceſſary; for he ſays they all agreed that it did no Good in the Rejoinder. But he ſays he told the Attorney-General, that he held the *Dutch living here within the King's Protection, being of a Friend Country*, to be alſo truly under his Subjection, and therefore *capable of the Title of his loving and obedient Subjects*, but not of the diſtinct Title of Natural Subjects, which is uſual in Statutes, ſet in Oppoſition againſt Denizens and Strangers. And beſides, the General Pardon hath Reſpect of Retribution for the Subſidy, wherein Strangers pay more than we, and in ſome Sort may be called Grantors; for by living here they tacitly ſubmit to our Laws, and ſo their Grant and Conſent is involved in the Conſent of Parliament. And he thought no Judge would doubt but that ſuch a Stranger ſhould have the Benefit of ſuch a Pardon againſt common Penal Laws, and other common Offences. *But* if the *Stranger* were *not in the Kingdom at the Time of the Pardon*, then he were *not within the Benefit*; for he is no otherwiſe a Subject than by his Reſidence here. Hob. 270. Courteen's Caſe.

7. None ſhall be obliged to *lay the Streſs* of his Caſe *on any particular Words* or Clauſe *in a particular Pardon*, but may take Advantage of the whole. 2 Hawk. Pl. C. 398. cap. 37. S. 68.

8. He that will take the Benefit of a General Pardon, *ought to plead the Statute by which* the General Pardon was granted. 21 Car. B. R. 8 Ed. 4. 7. 4 H. 7. 8. That the Court may judge whether his Offence be pardoned or not, which they cannot do, except the Pardon be pleaded, *and* that the Party *ſhew he is comprized in the Pardon, and not excepted* out of it. 2 L. P. R. 268. Tit. Pardon.

(U. a. 15) The Effects and Conſequences of a Pardon.

1. FOR *breaking of* the *Priſon* of the King, the Appellee ſhall be *ouſted of Battel*; but if he can ſhew the King's *Pardon for the Breaking it*, he *ſhall have the Battel*; for the Breaking is to the King, by the Opinion of the Court. Br. Battail, pl. 3. cites 1 Aſſ. 3.

S. C. cited by the Ch. J. Hob. 82. Trin. 13 Jac. in Caſe of Cudding-

ton v. Wilkins, who ſaid that the Reaſon of the Preſumption of the Guiltineſs is the ſame after the Pardon as before; but that the Reaſon of the Caſe is, that the King's *Pardon* not only *clears* the Offence it ſelf, but *all* the Dependencies, Penalties and *Diſabilities* incident unto it, and that againſt the Appellant; for tho' the Appellant has an Intereſt in the original Fact, which the King would not diſcharge as againſt him, yet in the Breaking of the Priſon he had none but oblique.

2. If the *Heir of the Tenant of the King enters after the Death of his Father*, and the *King pardons* to him *all Manner of Entries made upon his Poſſeſſion*, yet *he has no Frank-tenement*, inaſmuch as the Statute is Quod nullum accreſcat ei Liberum Tenementum. Br. Charters de Pardon, pl. 43. cites 5 E. 4. 4. per Danby.

If *Intruſion by the Heir after the Death of his Anceſtor be found by Office*, and

after the King *pardons it by Act of Parliament, or by Letters Patents*, yet the *Heir ſhall ſue Livery*; for it is not reſtored to him by the Pardon. Br. Charters de Pardon, pl. 54. cites 30 H. 8.——*But* if the Pardon was *granted before Office found, and at the Making* of the Pardon *the Heir is of full Age*, he ſhall retain the Land; and Office found after the Pardon ſhall not grieve him. Br. Charters de Pardon, pl. 54. cites 30 H. 8.——Where *Office* is *found before the Pardon granted*, the Pardon ſhall not ſerve; for then the King is ſeiſed by the Office, and there a *Releaſe or Pardon* cannot give it, but *there ought to be a Gift or Grant*. Br. Charters de Pardon, pl. 52. cites 29 H. 8.

3. *Appeal of Robbery*; the *Plaintiff has Judgment* againſt the Defendant, and the King pardons him, yet he *ſhall ſuffer Execution*, *unleſs* the Plaintiff upon Scire facias would confeſs that he would not ſue further. Br. Appeal, pl. 128. cites 11 H. 4. 16.

4. Attorney had made *Capias*, *of which there was no Original*; by which Attachment iſſued againſt him, and he was taken and examined, and confeſs'd it, and was committed to the Fleet, and was there for a Month, and then was put to his Fine, and was *ſworn that he ſhould not meddle any more in the Law in any Court, and his Name ſtruck out of the* Roll of Attornies; quod nota. Per Newton, Hereafter you may have *Charter of Pardon* of the King, and come back; for the Biſhop may abſoil you of this Oath. Br. Attorney, pl. 7. cites 20 H. 6. 37.

5. If *Alienation without Licence* be *pardoned by Act of Parliament*, the Party may enter without Ouſter le main, or Amoveas manum; but contra by other Pardon by Letters Patents; note the Diverſity. Br. Charters de Pardon, pl. 53. cites 29 H. 8.

6. If the King *pardons a Man attainted of Treaſon* or Felony, and after he *purchaſes Lands in Fee*, and takes Feme, and has Iſſue, and dies, this *Iſſue ſhall inherit*; for by the Pardon he was well reſtored to his Blood; becauſe he is thereby inabled to purchaſe, and need not to this Purpoſe have Reſtitution; and this Reaſon ſerves for the Iſſue had before the Attainder and Pardon. Dal. 14. pl. 3. 1 Mar. 1 Anon. per Bromley and Portman.

2 L. P. R. 270. Tit. Pardon, cites S. C.—Serjeant Hawkins ſays, It ſeems agreed that the King's Pardon

cannot reſtore the Blood, ſo as to make the Perſon attainted capable either of inheriting others, or of being inherited himſelf by any one born before the Pardon; yet if ſuch Perſon have a Son born after, and purchaſe Lands, and dies, ſuch Son may be his Heir, unleſs he have an elder Brother alive born before the Pardon; for a Pardon does, as it were, make a Man a new Creature, and give him a new Capacity, in Reſpect whereof his Iſſue born after the Pardon may be his Heir, as to Lands purchaſed after the Pardon, in the ſame Manner as if he had never been attainted. 2 Hawk. Pl. C. 458. cap. 49. S. 51.——And Ibid. 396. cap. 37. S. 57. The Serjeant ſays, It ſeems agreed that the King's Pardon *cannot ſalve the Corruption of Blood by Attainder* of Treaſon or Felony.

7. One Burton a *Parſon was deprived for Adultery*, and then came a General *Pardon* of Offences, inter alia, of Adultery. Reſolved that

S. C. cited Hob. 293.—

by Virtue thereof he was *now become Parſon again*, without any Sentence to avoid the ſaid Deprivation; for by the Pardon the Adultery, which was the Cauſe and Foundation of the Sentence of Deprivation, is diſcharged, and by Conſequence all that depends upon it. 6 Rep. 13. b. cites D. 135. Burton's Caſe.

S. P. Palm. 412. Harris v. White. —Sid. 168. pl. 27. ſays, This ſeems to be S.C. as Lat. 22. Boſton's Caſe, tho' the Report there ſuppoſes it to be in another Time.——This Caſe was denied to be Law by Windham J. who ſaid that tho' Lord Coke cites it out of Dyer, yet no ſuch Caſe is to be found there; and that it has been often denied: And without Doubt it is not Law, that a Parſon ſhall be reſtored by the Relation of the Pardon, without other Act. 1 Sid. 164. Mich. 15 Car. 2. B. R. in Caſe of the King v. Wainwrite and Jefferies——And again denied. Sid. 168. in the Caſe of Toombes v. Etherington.——And again denied per tot. Cur. Sid. 222.

8. In Caſe for Words, the Defendant juſtifies, becauſe the Plaintiff had *ſtole Sheep*; and the Plaintiff replies a General Pardon. The Court held upon Demurrer, that by the Pardon *both the Puniſhment and Fault were taken away*, for that the Wrong was done to the King by the Common Law; and the King being Supreme Head, if he pardons, the Party is cleared of the Wrong. Brownl. 10. Trin. 12 Jac. Coddington v. Wilkin.

Hob. 81. Trin. 13 Jac. S. C. by Name of Cuddington v. Wilkins. And it was ſaid, that he could no more call him Thief in the preſent Tenſe, than to ſay that a Man has the Pox, or is a Villein, after he is cured or manumitted; but that he had been a Thief or a Villein, he might ſay. And it was held no great Difference, tho' this had been a ſpecial Pardon, and not known to the Defendant; for he muſt take Heed at his Peril, that he does no Man wrong.——S. C. Hob. 67. And ſays, that in the End it was adjudged for the Plaintiff, tho' it may be he knew him not to be within the Pardon; for there is no Cauſe to favour idle and injurious Words. But perhaps if he had arreſted him for the Felony after Pardon, it might have been excuſed if he knew it not, becauſe it is an Act of Juſtice.

9. A. was *Chancellor* of a Dioceſe, but was *deprived and fined* &c. by the Star-Chamber for certain Miſdemeanors: B. obtained his Office. A. was afterwards pardoned. It was held by all the Judges at Serjeant's-Inn, that the Pardon had *avoided the whole Sentence*, except as to the *Fine* to the King, and that the Sentence could not take away the Office, being a *Freehold*; and ſo A. was *allowed to proſecute his Aſſiſe* for the Office. Cro. C. 55. Mich. 11 Car. B. R. Bennet v. Eaſedale.

10. T. the Patron *preſented A. by Simony*, and then *A. died*, and then he *preſented B.* and then the *King preſented*; and then came the Act of *General Pardon* in the 25th of Car. 2. *wherein there is a Clauſe of Reſtitution* of Forfeiture &c. And the Queſtion was, whether or no this had reſtored the Party to his Right of Preſenting. Per North Ch. J. Tho' the King does pardon the Simony, yet the *Diſability remains* ſtill upon the Perſon, and renders him incapable of the Benefice, as was reſolved in the Caſe of Phillips and Drite lately. But the Court was divided in Opinion, and that which made the Difficulty of the Caſe was, becauſe the King had preſented here before the Act of Pardon; and altho' the King may revoke his Preſentation by expreſs Words, yet whether or no the general Words of Reſtitution contained in the Pardon ſhall amount to a Revoking of the Preſentation, and of reſtoring the Party to his Right of Preſenting, is the Great Queſtion. Et adjornatur. Freem. Rep. 198. Trin. 1675. C. B. The King v. Turvill and the Biſhop of Lincoln.

11. The King pardoned inter alia, *all Judgments* and Convictions *for not coming to Church*. And it was agreed, that this Pardon did not only pardon the Conviction of *Recuſancy*, but alſo *reſtored the Party to his Ability, notwithſtanding he had not conformed*. 3 Lev. 333. Trin. 5 W. & M. C. B. Lord Petre v. the Univerſity of Cambridge.

12. A. was indicted and tried at Bar for *High Treaſon*; and it was objected to the Evidence of B. that he had *ſtood in the Pillory upon a Judgment* in an Information *for Perjury*; and it was held by Holt Ch. J. that he was *reſtored* by the General Pardon of 2 W. & M. which operated by Way of Reſtoration, and made him a *new Creature*. And

it

it was inſiſted, that the Infamy and Diſability in this Caſe flowed from the *Judgment, and* not from the *Crime*, which might be pardoned even by the *King alone*, tho' where it flows from the Crime, it can't be pardoned but by *Act of Parliament*. Salk. 689. Paſch. 7 W. 3. B. R. The King v. Crosby.

13. A. was convicted of *Barretry*; and upon this his Evidence being objected to, the Record was produced, and the Judgment was to pay 500 Marks, but was *not to ſtand in the Pillory*. This being held to be a good Objection (becauſe the Diſability ariſes from the Infamy of the Crime, whether the Puniſhment be infamous or not) it was then inſiſted to be within the late General Pardon. It ſeems to have been held per Holt Ch. J. that the Conviction was pardoned, and the Party *reſtored to his Credit* by the Act of Parliament, but that the King's *ſpecial* Pardon could not have reſtored his Credit, the Diſability in this Caſe being incurr'd by the *Infamy of the Crime*, and not of the *Puniſhment*. Salk. 690. Mich. 12 W. 3. B. R. The King v. Ford.

14. A. having been attainted and pardoned, and permitted to go beyond Sea, his *Creditors* moved to *charge him in Cuſtodia*: but Holt Ch. J. refuſed it, for this would *defeat* the Queen's Pardon, by diſabling him from going beyond Sea, which was the Condition of the Pardon; and there is no Reaſon that the Pardon ſhould enure for the Benefit of the *Creditors*, to the Prejudice of the *Party*, and put them in a *better Condition than before*; for if the Attainder had continued he would have been *hanged*. Salk. 500. Hill. 1 Ann. B. R. Foxworthy's Caſe.

15. The *Crime being pardoned cleanſes the* Party from the *Guilt*. Per Raymond Ch. J. Gibb. 108. and ſays it was expreſsly adjudged ſo per Holt Ch. J. in the Caſe of Aaron Smith. 2 Salk. 689.

It diſcharges all the Effects and Conſequences of the Crime. 12 Mod. 119. The King v. Groenvelt.——A General Pardon *doth diſcharge* not only the Puniſhment which was to have been inflicted upon the Perſon that did commit the Offence pardoned, but alſo *the Guilt* of the Offence it ſelf. It pardons Culpa ſo clearly, that in the Eye of the Law the Offender is as innocent as if he never had committed the Offence, ſo far doth Mercy extend therein. 2 L. P. R. 270. Tit. Pardon.

16. If an *Indictment* on the Statutes of *Forcible Entry* be removed into B. R. and the Defendant, having been turned out of Poſſeſſion by the Grant of Reſtitution to the Proſecutor by the Juſtices of Peace, traverſes the Force in the King's Bench, and then the Offence is pardoned by a General Pardon, the Court cannot proceed on the Trial, notwithſtanding the Defendant would waive the Benefit of the Pardon, becauſe it appears judicially, that the King can have no Benefit of a Fine from the Defendant, if a Verdict paſs againſt him. Hawk. Pl. C. 154. cap. 64. S. 63.

17. Serjeant Hawkins ſays, It ſeems to have been always agreed, That the *Forfeiture* of Goods *by Homicide ſe defendendo* may be ſaved by a Pardon (which in this particular Caſe ſeems to purge the Offence ab initio.) 2 Hawk. Pl. C. 381. cap. 37. S. 3.

18. It ſeems agreed, That notwithſtanding the King's Pardon *to a Simoniſt* coming into a Church, contrary to the Purport of 31 Eliz. 6. *or to an Officer coming into an Office by a corrupt Bargain*, contrary to the Purport of 5 & 6 E. 6. 16. may ſave ſuch Clerk or Officer from any criminal Proſecution in Reſpect of the corrupt Bargain, yet it ſhall not enable the Clerk to hold the Church, nor the Officer to retain the Office, becauſe they are abſolutely diſabled by Statute. 2 Hawk. Pl. C. 396. cap. 37. S. 56.

19. Pardon of Treaſon or Felony, even after a Conviction or Attainder, does ſo far clear the Party from the Infamy, and all other Conſequences of his Crime, that he may *not only have an Action for* a Scandal, in *calling him Traitor or Felon*, after the Time of the Pardon, *but may* alſo *be a good Witneſs*, notwithſtanding the Attainder or Conviction; becauſe the Pardon makes him, as it were, a new Man, and gives

And it has been admitted, that the King's *Pardon of the Burning of the Hand*;

on a Conviction of Manſlaughter, gives him a new Capacity and Credit. 2 Hawk. Pl. C. 395. cap. 37. S. 48.

has the ſame Effect as to this Purpoſe as the Burning would have had, which is agreed to *reſtore the Party to his Credit*. 2 Hawk. Pl. C. 395. cap. 37. S. 49.——*But* it has been adjudged, That a Pardon is *of no* Manner of *Force* as to this Purpoſe, *till it has paſs'd the Great Seal.* 2 Hawk. Pl. C. 395. cap. 37. S. 50.

(U. a. 16) Pardon. Pleadings.

1. IF a Man be *outlawed in Treſpaſs* at the Suit of the King, and has *Pardon*, yet he *ſhall not plead Not Guilty after*; quod nota. Br. Charters de Pardon, pl. 30. cites 22 Aſſ. 47.

If there be a Variance between the Record on which a Man is convicted or attainted, and his Charter of Pardon, yet *if there be no Repugnancy to intend that the ſame Perſon or Thing are meant in both, it may be ſupplied by proper Averments.* And therefore, if one be indicted by the Name of J. S. Yeoman, and pardoned by the Name of J. S. Gentleman, or indicted by the Name of B. the Tasker, and pardoned by the Name of B the Son of W. he may make good the Variance, by averring that he is the ſame Perſon intended in ſuch Indictment and Pardon; or if in an Indictment of the Death of J. S. the Stroke be ſuppoſed to have been given the 1ſt of Auguſt, and in the Pardon on the 3d. the Party may aver that the Death of one and the ſame J. S. are intended in both. And if ſuch variant Pardon be pleaded without ſuch Averment, it ſeems that the Court may in Diſcretion give the Party farther Day either to perfect his Plea, or to purchaſe a better Pardon. 2 Hawk. Pl. C. 398. cap. 37. S. 66.——3 Inſt. 240.

2. A Man *indicted of Treſpaſs came without Proceſs, and pleaded Pardon* of the King *of all Treſpaſſes*, and of this vouched Record, and *had two Days to have his Record.* Br. Charters de Pardon, pl. 33. cites 27 Aſſ. 58.

S. P. Or he may plead all the firſt Record of Diſcharge, and have Day to ſhew it. Br. Monſtrans, pl. 36. cites S. C.

4. If a Man is *indicted of the Death of a Man, and arraigned*, and *pleads Pardon, and is diſcharged*, and after *Appeal is brought* againſt him, and the *Plaintiff is nonſuited*, and the *Defendant arraigned upon the Declaration for the King, and pleads the Charter again*, there he *ought to ſhew it, notwithſtanding it was allowed of Record before.* Br. Charters de Pardon, pl. 15. cites 11 H. 4. 41.

S.P. 2 Hawk. Pl. C. 398. cap. 37. S. 67.

5. He who *pleads Not Guilty cannot plead Pardon after, unleſs it be of later Date*, and the *Charter* was allowed, notwithſtanding that it *varied in Names*, and *Day of the Indictment and the Appeal*; but it does not appear what Variance; the Reaſon ſeems inaſmuch as it was of Appeal of Death, and a Man cannot be twice killed; contra of Robbery. Br. Charters de Pardon, pl. 15. cites 11 H. 4. 41.

Jenk. 129. pl. 62. ſays, That if the King pardons a Felon, and it is

6. If a *Felon has Pardon* to plead, *and pleads Not Guilty*, he ſhall loſe the Advantage of his Pardon, and ſhall not plead it after. Br. Corone, pl. 199. cites 35 H. 6. 1. & concordat 19 H. 8. and in H. 4. 41. per Cheynie; but contra M. 3 M. 1.

ſhewn to the Court, and yet the Felon pleads Not Guilty, and waives the Pardon, he ſhall not be hang'd; for it is the King's Will that he ſhall not, and the King has an Intereſt in the Life of his Subject. The Books to the contrary are to be underſtood where the Charter of Pardon is not ſhewn to the Court. By all the Judges of England.

Serjeant Hawkins ſays, It is certain that a Man may waive the Benefit of a Pardon under the Great Seal, as where one who has ſuch a Pardon, does not plead it, but takes the General Iſſue, after which he ſhall not reſort to the Pardon. 2 Hawk. Pl. C. 396. cap. 37. S 59.

Br. Laches, pl. 6. cites S. C.——

7. B. *Sheriff* of the County of O. returned *an Exigent Quarto exactus* in B. R. *and tender'd to aver that the Defendant is outlawed*, upon which

iſſued

iſſued Certiorari, and the *Coroners returned him outlawed by the ſame Exigent*, by which the *Sheriff was amerced to* 50 *l.* and *the Eſtreats of it ſent into the Exchequer*; upon which Proceſs iſſued againſt him, by which he came, and *ſhewed Pardon of all Miſpriſions, Offences and Contempts* done *meſne between the Certificate of the Coroners and the Amercement adjudged*, and prayed to be diſmiſs'd; but the Barons awarded him to the Fleet, by which he had Habeas Corpora out of B. R. to the Warden of the Fleet, who brought him to the Bar, and ſhewed the Cauſe aforeſaid, and there he pleaded the ſame Pardon and Writ of Allowance, and found Surety if &c. and the Attorney of the King demurr'd upon his Plea; and per Cur. *Where the Eſtreats are ſent into the Exchequer*, as above, *yet the Record remains in Bank, and there it ſhall be traverſed, and there the Pardon ſhall be pleaded, and not in the Exchequer where the Eſtreat is.* And Per Forteſcue Ch. J. the Points are, If the Words of the Pardon are ſufficient? and if the Sheriff be attainted by Certification of the Coroners? and if the Sheriff has ſurceaſed his Time to plead his Pardon, or not? Br. Charters de Pardon, pl. 25. cites 36 H. 6. 24.—And ſays, that 37 H. 6. 21. it appears that the Sheriff brought Special Writ out of Chancery in Nature of an Audita Querela, by Force of his Charter, directed to the Juſtices of B. R. that they do Right to him, by which he had the Habeas Corpus. And the Opinion of all the Juſtices was, that the Pardon ſhall ſerve the Sheriff; for thoſe Words Miſpriſion and Offence ſhall ſerve him, for it is Miſpriſion and it is Offence; and tho' the Pardon be before the Amercement, yet the Pardon is good; for the Falſe Return was the Offence, which was before the Pardon, and then when it is pardoned no Amercement ought to be aſſeſs'd, becauſe it is pardoned; and if the Juſtices had had Conuſance thereof, they would not have aſſeſs'd the Amercement; and the Party has not ſurceaſed his Time to plead it; for he *had not Day to plead it*, nor Cauſe till the Amercement was aſſeſs'd and eſtreated, and Proceſs made for it. And this Caſe was argued in the Exchequer Chamber by all the Juſtices; & per tot. Cur. A Pardon granted at the Suit of the Party *ſhall be taken more ſtrong for the King, and more ſtrong againſt the Party*; *but* a *General Pardon*, *or* Pardon granted *ex mero Motu*, ſhall be taken more ſtrong againſt the King, and moſt for the Benefit of the Party; for it is intended there that the King is appriſed of the Matter; Contra where it comes by Suit of the Party, or by Surmiſe: And it was ſaid, that where the Sheriff returns Quarto exactus, and the Coroners above certify that the Defendant is outlawed, it ſhall be *intended that the Certificate of the Coroners is true, becauſe they are Judges of it*, and the Return of the Sheriff is falſe. Quatermain's Caſe.

2 Hawk. Pl. C. 393. cap. 37. S. 69. cites S. C.

8. Where a Man pleads Pardon *granted by Parliament*, he *ought to aver that he is not any of them who are excepted, and that he was not Adherent to M. who was excepted.* Br. Charters de Pardon, pl. 46. cites 8 E. 4. 7. by the Juſtices.

S. P Br. Parliament, pl. 40. cites S. C.—— Jenk. 129. pl. 62. cites S. C.——

9. *And ſo of all other Exceptions.* Br. Charters de Pardon, pl. 46. cites 8 E. 4. 7.

S. P. per Cur. Freem. Rep. 84. Paſch. 1673. in Caſe of Philips v. Crawly.——S. P. 2 Hawk. Pl. C. 396. cap. 37. S. 60. ——S P. per Doderidge J. 2 Roll. R. 307. Hancock's Caſe.—— S. P. For *where Pardon*, Statute, Cuſtom, or the like, as Preſcription &c. *makes Exception* or Forepriſe, or Condition, or a Thing which amounts to it, *thoſe ſhall be pleaded expreſsly* Br. Charters de Pardon, pl. 66. cites 4 H. 7. 8.——S. P. Br. Pleadings, pl. 124. cites 8 E. 4. 7. & 4 H. 7. 8.

Where *diſabling Exceptions are in the Body of an Act of General Pardon*, there the *Party ought to aver that he is not within the Exceptions*, but *not* ſo *where* the Exceptions are *only in the Proviſo* of the Act; per Twiſden; which the Court agreed. Keb 20. Paſch. 13 Car. 2. Whitwick v. Osbalton.——S. C. argued 1 Lev. 26. but no Reſolution.——Holt Ch. J. agreed, that there were many Authorities, that he that pleads an Act of Pardon ſhould *ſhew* that he was *not within the Exception* of the Act, and cited 3 Inſt. 234. Yet he could not think it neceſſary to do it, if *the very Purview of the Act be not qualified and reſtrained*; for if there be firſt General Words of Pardon, and after comes a Proviſo or Exception, the natural Way is to plead the Pardon generally, and then the King's Attorney, upon View of the Pardon ſo entered upon Record in the Plea, is to ſhew that the Party is within the Exception. 12 Mod. 613. Hill. 13 W. 3. in Caſe of Ingram v. Foot.

Serjeant Hawkins ſays, If the Body of a Statute be general as to all Perſons whatſoever, and afterwards ſome are excepted in the Proviſoes, perhaps it may be ſufficient to plead ſuch Pardon without any Averment, That he who pleads it is none of the Perſons ſo excepted, it being a general Rule, that where a Man is within the general Words of the Body of a Record or Deed, which is qualified by ſubſequent Proviſoes, it is ſufficient for him to bring his Caſe within ſuch general Words, and that the Exceptions in ſuch Proviſoes ought to be ſhewn of the other Side. 2 Hawk. Pl. C. 397. cap. 37. S. 60.

10. *And* that *if J. S. be excepted*, and *there are three of the Name*, and the other pleads the Pardon, *he ought to ſhew it*. Br. Charters de Pardon, pl. 46. cites 8 E. 4. 7.

If a Perſon who would take Advantage of a Pardon be of the ſame Name with one of the Perſons excepted by Name, it is ſaid that it will not be ſufficient for him to aver that he was none of the Perſons excepted, without adding that he is a different Perſon from ſuch other of the ſame Name. But Serjeant Hawkins ſays, How it can be tried, unleſs it appear by ſome Addition to the Name in the Statute, may deſerve to be conſidered. 2 Hawk. Pl. C. 397. cap. 37. S. 60.

11. *And* where it is *pleaded in Pais, where the Attorney of the King is not preſent to confeſs the Averment*, they ſhall make Proclamation; and per Markham, the Court may rejoin for the King. Br. Charters de Pardon, pl. 46. cites 8 E. 4. 7.

Br. Charters de Pardon, pl. 50. cites S. C. but ſeems to be miſprinted.-- But *contra* it is *in Debt or Treſpaſs, where he is in Execution*; for there he ought to *ſhew* Acquittance, or other *Matter which proves the Plaintiff's Conſent*. Ibid.

12. If a Man be *brought into Court by Capias Utlagatum upon Appeal*, and he *pleads the Pardon of the King againſt the King*, he ſhall have *Scire facias* againſt the Appellant, *without ſhewing Matter of Diſcharge againſt him*. 21 E. 4. 73. b. Per Huſſey Ch. J. who ſhewed thereof Precedents.

S. P per all the Juſtices in Cam Scacc. Br. Jours. pl. 94. cites S. C. and 75 H. 6. 1. accordingly.

13. If *Recognizance of Debt paſſes for the King upon Iſſue tried*, and after the *King pardons it*, this *ſhall not be pleaded between Verdict and Judgment, but after Judgment*. Br. Charters de Pardon, pl. 75. cites 11 H. 7. 10.

S. P. Lane 71. Bently v. Leigh.— Vaughan ask'd Ellis whether, ſuppoſing there was a General Pardon, and the Party did not plead, nor the Judges did not take Notice thereof, whether the Party might have *Remedy by Writ of Error?* And Ellis ſaid No; becauſe they would *alledge nothing for Error but what did appear in the Record*; to which Vaughan aſſented. Freem. Rep. 84. Paſch. 1673. in Caſe of Phillips v. Crawly.

14. If *Quod ei deforceat* be brought, and a wrongful Entry is found, *and a General Pardon* in Parliament *pardons all Offences, if the Tenant*, when Judgment is given againſt him, *does not ſuggeſt* to the Court, *that* neither *he nor his Offence are excepted*, if *Judgment* be entered *Quod Capiatur, it is not Error*; for there are many Exceptions in a Pardon; and in a Civil Matter the *Court is not bound* ex Officio *to regard it, but they may if they will*; and therefore if Judgment be given Sed non in Miſericordia quia pardonatur, it is good; for the Judges may, if they will, take Conuſance of a Pardon, tho' it be not pleaded. Jenk. 258. pl. 54.

Serjeant Hawkins ſays, It ſeems agreed, that if any Perſons are excepted out of a General Pardon, the Court is not bound, and ſome have held that it has no Power, in Diſcretion to give any Perſon the Benefit of it, unleſs it be pleaded. 2 Hawk. Pl. C. 396. cap. 37. S. 60.——But when a *Pardon* is general, *without Exception of* any *Perſon or Cauſe*, in ſuch Caſe the Judges ſhall take Notice of it; per Doderidge. 2 Roll. R. 307. Hancock's Caſe.———The Party *need not to aver that his Offence is not excepted* in a General Pardon, becauſe the Juſtices have Notice ſufficient of Offences excepted by the Words of the Pardon, but not of Perſons; but this reſts upon the Averment; by the Opinion of both the Chief Juſtices, to which the Lord Keeper agreed. Mo. 619. Mich. 42 & 43 Eliz. in Caſe of Blake v. Allen———Where a *General Act* of Parliament *excepts certain* Kinds of *Crimes*, there is no Need to aver that the Crime whereof the Perſon is indicted, is not one of ſuch excepted Crimes; but the *Court ought judicially to take Notice whether it be excepted, or not*. 2 Hawk. Pl. C. 397. cap 37. S. 62.——*Alſo* where ſuch a *Statute excepts only one particular Perſon*, it has been ſaid that there is no Need of an Averment, that a Perſon indicted is not ſuch Perſon; but that the Court is to take Notice whether he be, or not. 2 Hawk. Pl. C. 397. cap. 37. S. 63.

15. In *Debt* the *Defendant pleaded Outlawry in* the *Plaintiff* at the Suit of one H. in C. B. The *Plaintiff pleaded* the *Pardon of* 31 *Eliz.* and

and alſo *that he brought Scire facias, and H. was returned dead*, by which he was adjudged to go ſine Die; upon which Plea the Defendant demurr'd in Law, becauſe it was not averr'd that he is not any of the Perſons excepted out of the Pardon, as 7 E. 4. 7. 4 H. 7. 8. Com. 103. But it ſeemed to the Court, that the Pardon is allowed enough to make any Man anſwer to the Action of the Plaintiff, but not againſt the Queen; for ſhe is not bound by the Allowance. Mo. 303. Hill 34 Eliz. Aſhley v. Harriſon.

16. A. was *outlawed* after Judgment before the General Pardon, and died after the Pardon. His *Executors* make Satisfaction, and *without any Proceſs plead* the Pardon. Adjudged, that as in this Caſe no Scire Facias, nor Capias Utlagatum, nor other Proceſs lies againſt the *Executors*, they may (*after Satisfaction made*) *come in gratis without Proceſs* for the Neceſſity of the Caſe, and plead the General Pardon, with an *Averment that they are not any of the Perſons excepted.* Adjudged per Cur. 6 Rep. 79. Trin. 5 Jac. Sir Edward Phitton's Caſe.

17. A. was indicted of ſtealing ſome Plate from King James, whereas it was in Truth Queen Anne's, and ſtoln from her, for which he was pardoned; and being again indicted, there was a General *Pardon, excepting Goods purloined from the King*; the Court doubting whether A. was within the Exception of this Pardon, adviſed him to plead. Cro. C. 449. Hill. 11 Car. B. R. Bell's Caſe.

18. In *Caſe for Words*, the Defendant juſtifies that the Plaintiff had *ſerved* as a Soldier *againſt the King*; Plaintiff demurs, by Reaſon of the General Pardon. But it was adjudged for the Defendant; for that the Plaintiff ought to have *ſhewn that he was not one of the Perſons therein excepted.* Raym. 23. Mich 13 Car. 2. B. R. Harris's Caſe.

19. In a *Scire facias* brought upon an Inquiſition *againſt A. who owed* 30 *l. to J. S.* who had been *attainted for Murder*, and executed, *A. pleads* that ſhe was *not indebted Modo & forma.* Hale Ch. B. held, that upon this Iſſue the Act of General Pardon *could not be given in Evidence*, but ought to have been *pleaded*; this not being a General Iſſue within the Intent of the Act, it would have been a good Bar. Hard. 421. Trin. 17 Car. 2. The King v. Barnard.

20. The *Earl of S.* was by the Convention, which was afterwards turn'd into a Parliament, Anno 1 W. & M. *impeached* by the Commons *for High Treaſon*, for being reconciled to the Church of Rome contrary to the Statute; *and* thereupon he was *committed to the Tower* by the Houſe of Peers, and there continued till the Parliament was diſſolved, and a new one called, and now (after a long Seſſions) adjourned for two Months. *And now* the Earl *was brought* to the Bar *by a Habeas Corpus, and* his Counſel *moved that he* might *be diſcharged upon the* new *Act of Oblivion*, which paſs'd in the laſt Seſſions of Parliament, *wherein neither his Crime nor* his *Perſon were excepted*, but clearly within the Act of Pardon. But per Cur. *Notice cannot be taken of this Act, unleſs* it be *pleaded with the Averments*; becauſe there are ſeveral Exceptions in it, both as to Crimes and Perſons, therefore it is neceſſary that the Party, who would have the Benefit thereof, ſhould aver himſelf by Plea capable of ſuch Benefit, and not excepted therein, as 'tis ruled in Plowden, and other Books; *and here the Lord* at the Bar *cannot plead* this Pardon, *becauſe there is nothing before the* * *Court upon which to ground ſuch Plea.* Carth. 131. 132. Paſch. 2 W. & M. B. R. The Earl of Salisbury's Caſe.

* The Reporter adds a *Quære*, Whether he might not plead it *in Diſcharge of the Matter returned by the Habeas Corpus*, and enter it as the ſame Roll. Ibid. in Marg.

21. 12 *W.* 3. 2. *No Pardon ſhall be pleadable to any Impeachment by the Commons in Parliament.*

22. It ſeems plain, that *Pardons of* Manſlaughter, or any *other Felony except Murder or Rape, remain as* they were *at Common Law*; from whence it follows, that the *Pardon of* the *Felonious Killing* of J. S. *may be well pleaded to an Indictment of Manſlaughter* for killing him. 2 Hawk. Pl. C. 386. cap. 37. S. 18.

23. He

23. He who pleads a *particular Pardon*, ought to *produce it ſub Pede Sigilli*, tho' it be a Plea in Bar; becauſe it is preſumed to be in his Cuſtody, and the Property of it belongs to him; *yet* if a Man pleads ſuch Pardon, without producing it, *the Court may* in Diſcretion *indulge him a farther Day* to put in a better Plea; and that at ſuch Day he may perfect his Plea by producing the Charter. 2 Hawk. Pl. C. 397. cap. 37. S. 65.

(X. a.) Charter of the King. *Non Obſtante.* [*The Original* thereof.]

It was ſaid that Non Obſtante was invented and *firſt uſed in the Court of Rome*, for which Marſil. Pat. pronounced a Væ againſt the ſaid Court, for introducing this Clauſe of Non Obſtante, which has been an ill Precedent, and miſchievous to all Commonwealths of Chriſtendom; for the Temporal Princes perceiving that the Pope diſpenſed with his Canons, have uſed their Prerogative to diſpenſe with their penal Laws and Statutes, where before they had cauſed their Laws to be religiouſly obſerved, as the Laws of the Medes and Perſians, which could not be diſpenſed with. And therefore a Canoniſt ſaid, Diſpenſatio *eſt Vulnus quod Vulnerat jus commune.* And another ſaid, That all Abuſes ſhould be reform'd ſi duo tantum Verba, (viz. Non Obſtante) non impedirent. And Mat. Paris, in Anno Dom. 1246. having recited certain Decrees made in the Council at Lions, which were beneficial for the Church of England, Sed omnia hæc & Alia, ſaid he, per hoc Repagulum (Non Obſtante) infirmantur. Dav. Rep. 69. b. Paſch. 9 Jac. in C. B. in Ireland, in the Caſe of Commenda.

1. **IN Time of** H. 3. about the Year 1252. the Clauſe of Non Obſtante was uſed firſt **in England by the King, in his Grants and other Writings. Matthew Paris calls it an** odious and deteſtable **Clauſe. And Roger de Thursby then Juſticiary, fetching a deep Sigh at the Sight thereof in the King's Grant, cried out of both the Time and it, ſaying it was a** Stream derived from the ſulphureous Fountain of the Clergy. **Speed.** 530.

The Laws concerning Non Obſtantes are none of the ancient Laws of this Land, but brought in by the Pope. The Book of 2 H. 7. fo. 6. b. & 7. firſt gave Riſe to this exorbitant Power; yet it is not the Opinion of all, or indeed of any of the Judges, as it is affirmed to be. Arg. 2 Mod. 261. Trin. 29 Car. 2. in the Exchequer, in the Caſe of Arris v. Stukely.

(Y. a.) Non Obſtante. *Licences* upon Penal Statutes.

1. **WHEN an Act of Parliament** generally prohibits a Thing upon a Penalty which is Popular, or only given to the King, **becauſe it may be** inconvenient to **diverſe** particular Perſons, **in Reſpect of Perſon, Place and Time &c. the Law has given Power to the King to diſpenſe with** particular Perſons. **Co.** 11. *Monopolies* 88.

* S. P. Per the Ch. J. 8 Mod. 18. Mich. 7 Geo. in Sir HansSloane's Caſe. —— To ſay that the King cannot diſpenſe with a Law that is made pro Bono Publico, is to ſay that he can diſpenſe with no Law at all, for all Laws are ſuppoſed to be pro Bono Publico, when they are firſt made; per Herbert Ch. J. Freem. Rep. 493. Paſch. 1682. in Sir Edward Hale's Caſe.

2. But **when the Parliament has made an Act to reſtrain** * pro Bono Publico **the Importation of ſeveral foreign Manufactures, to the Intent that the Subjects of the King may apply themſelves to the making of the ſaid Manufactures, there the King cannot for a private Gain grant the ſole Importation of them to one or diverſe (without any Limitation) Non Obſtante the Act. Co.** 11. *Monopolies* 88.

3. As **the King cannot licence a Man** to import foreign Cards, **notwithſtanding the Act of** 3 E. 4. **for the Reaſon aforeſaid. Co.** 11. *Monopolies* 88.

There is not any Difference when

4. **Where a Statute** concerns the Benefit of the King only, **he may diſpenſe with it by a Non Obſtante. H. 7. Ja. B. Per Coke.**

5. But

5. But **where a Statute concerns** the Benefit of the Subject, **there the King cannot diſpenſe with it by a Non Obſtante. H. 7 Ja. B.** *Hicman's* **Caſe. Per Curiam.** the Law diſpenſed with is *Pro Bono Publico*, for *every Law is ſuppoſed to be ſo*; but the true Difference is, when the Law gives any particular Perſon an Intereſt, and when it concerns no one Perſon more than another; for there, in the firſt Caſe, the King cannot diſpenſe, but in the laſt he may, becauſe he alone is injured; for though ſuch a Law be pro Bono Subditorum, yet it is not Singulorum, but Populi Complicati; and no One can have an Action, for as well every one may have an Action. Per Vaughan Ch. J. Freem. Rep 138. Hill. 1673. Thomas v. Sorrell.

The King cannot diſpenſe with any Thing that is forbid by the Statute de Piſtoribus, nor with the Statute againſt Mixing of Wine, for there is a particular Wrong to the Buyer. Ibid. 139.

In Caſe of a Common Informer, after Action commenced, the King cannot diſpenſe, becauſe the Beginning of the Action doth attach an Intereſt in the Party, though the King might pardon it before Action brought. Ibid.

In ſome Caſes the King cannot diſpenſe where no particular Intereſt or Action was given, as in Caſe of Simony, or Buying of Offices &c. but that is becauſe the Perſons there are under an abſolute Diſability, as if they were dead; per Vaughan Ch. J. Ibid. 139.

It was reſolved that the King could not diſpenſe with the Diſability upon the Statute of 31 Eliz. 6. of *Simony*, by a Non Obſtante; for *when an Act of Parliament* is made, that *diſableth* any Perſon, or maketh any Thing void or tortious *for the Good of the Church or Commonwealth*, in this Law all the King's Subjects have an Intereſt; and therefore the King cannot diſpenſe therewith, any more than with the Common Law. 3 Inſt. 154. cites Mich. 13 Jac.——But where a *Statute prohibits* any Thing *upon a Penalty*, and gives the Penalty *to the King*, or to the King and the Informer, there the King may diſpenſe with the Penalty; and this Diverſity is warranted by our Books. 3 Inſt. 154.

6. As **where the Statute of** 15 R. 2. cap. provides in the Negative, That the Admiral ſhall not hold Pleas of any Things but **of thoſe which were** done ſuper Altum Mare, **the King cannot by his Charter diſpence** * **with it by a Non Obſtante, and give Power to the Admiral to hold Plea a primis Pontibus uſque ad Mare, becauſe this Statute was made for the Benefit of the Subject. H. 7 Ja. B.** *Hicman's* **Caſe. Per Curiam.** * Fol 180. Bis.

7. It was ordained by the Statute Staple of 27 E. 3. that Merchants Aliens might bring over the Sea Merchandizes of the Staple, but not Merchants Denizens; **and after, by the Aſſent of the King and his Counſel, for certain Reaſons Paſſage was granted of the ſaid Merchandizes of Denizens; and thereupon Proclamation made and ſent to the Cuſtomers, to ſuffer them to paſs till a certain Time, paying the Cuſtoms as Aliens.** And becauſe that the ſaid Merchants Denizens doubteth them to be impeached in Time to come for their Merchandize which they have ſo paſſed, by Virtue of ſuch Grant and Proclamation, foraſmuch as they were made out of the Parliament, the King willing to provide for their Surety in this Behalf, hath ratified and confirmed in this Parliament the ſame &c. 34 E. 3. cap. 21. Expired.

8. **Rot. Parl. 1 H. 5. N. 15. The Commons pray, That the Statutes for** Voidance of Aliens out of the Realm **be held and executed; to which the King agrees, ſaving his Prerogative, that he may diſpenſe with ſuch as he pleaſe; and thereupon the Commons** anſwered, **that their Intention was no other, nor ever ſhall be, by the Aid of God.** Prynne's Cott. Rec. Abr. 535. N°. 15.

9. **Rot. Parl. 1. H. 5. N. 22. The** Statutes of Proviſors confirmed, and that the King ſhall not give any Protection or Grant againſt the Execution of them, ſaving the King's Prerogative; **to which the King agreed.** Prynne's Cott. Rec. Abr. 536. N°. 22.

10. Where a Statute is, *That none ſhall ſhip Wool, unleſs to Calais*, the King may diſpenſe with it by *Licence*, and this *before Seiſure, and Action taken by the Party* &c. and this with Clauſe of Non Obſtante. Br. Prerogative, pl. 122. cites 2 R. 3. 11. D. 54. Marg. pl. 17. The King by his Prerogative may licenſe any to *trade with Commodities Unlawful*, as well as Lawful; and cites Rot. Parl. 29 H. 6. N°. 15. Et Clauſ. Ann. 19. H 3. and that R. 2. in the 20th Year, gave Leave to the Merchants of Newcaſtle to carry Wools and Fells to any other Port beſides Calais, which was renewed to them Anno 5. 21. and 30 H. 6. he granted to Benedict **Banoni** Merchant of Flanders, Non Obſtante any Statute in Reſtraint 60 Sacks of Wool; ſo H. 4 diſpoſed of great Quantities of *Tin*, and H. 7. raiſed great Sums of Money in granting Leave to Merchants to trade Inward and Outward Commodities, as to Alonzo de Bruges great Proportion of *Wood* Anno Sexto, and a Multitude of other Kind of Grain and other prohibited Things, as

in Annis 20. 21. 22. prout Patet ex Compoſitione in [inter] H. 7. and Dudley.———Ibid. cites Hill. 3 Jac. B. R. Rot. 128. Information againſt **Fawes**, upon the Statute 5 Eliz. for Shipping and Tranſporting of Sheep-ſkins, and he pleaded the Grant of Qu. Eliz. Anno 37. to one Gilbert Lee, to tranſport the Number of 200000 a Year for 10 Years to come &c.

S. C cited by Williams J. 3 Bulſt. 5.

11. The King licenſed one *to tranſport Bell-mettal, Non Obſtante any Statute made, or to be made*; afterwards an Act was made, prohibiting the Exportation of Bell-mettal, upon a Penalty. It ſeemed to Baldwin and Shelly, that by this Act, to which every Man is Party, the Licence was revoked, and that the King cannot diſpenſe with a new Law to be made, before it is made, as he may in Things to come, in which he hath an Inheritance; as he may grant to one to be diſcharged of Taxes, and Subſidies to be granted, and it is good. Quære. Dy. 52. pl. 1. 2. Hill. 33. H. 8.

12. The Act 4 *H.* 7. *cap.* 9. *prohibits the Importation of Gaſcoigne Wine, but only in Engliſh Ships*, and the Maſter and Mariners being Engliſh, under Pain of Forfeiture &c. afterwards the King by Letters Patents *licenced one to import* 600 *Tun* of that Wine *in any Ship, Non Obſtante the Statute, without ſaying any Thing of the Mariners* &c. And by the Statute of 32 H. 8. cap. 14. it is enacted that the ſaid Statute ſhall ſtand in full Force, ſo that from henceforth no Perſon ſhall attempt to do any Thing contrary thereto, upon the Pain limited in the ſaid Statute. And upon Information brought in the Exchequer againſt the Aſſignee of the Patentee, for importing contrary to the 4 H. 7. 9. he pleaded the King's Grant, without a Profert hic in Curia of the Letters Patents. And the better Opinion was, that for that Reaſon the Plea was ill; but as to the Matter in Law, whether the Grant was good or not, they ſeemed not ſo; quære. And by the Report of Baron Forteſcue, the Judgment was given for the King the ſame Term, for the Inſufficiency of the Plea, but not for the Matter in Law. Ideo inde quære. D. 54. pl. 17. Mich. 34 H. 8. Richard's Caſe.

13. *No Act can bind the King* from any Prerogative which is ſole and inſeparable to his Perſon, *but that he may diſpenſe with it* by a Non Obſtante; and this Royal Power cannot be reſtrained by any Act of Parliament, neither in Theſi nor in Hypotheſi, but that the King by his Royal Prerogative may diſpenſe with it. 12 Rep. 14. b. Hill. 24 Eliz. Anon.

14. Where a *Statute expires, and is revived*, it ſeems as if Non Obſtante to the expired Statute will not reach the new revived one. See D. 202. b. 70. Marg.

S. C. cited 3 Bulſt. 91. Mich. 13 Jac. in Caſe of the King v. Zaker & al.——S. C. cited Cro. J. 386. Mich. 13 Jac. B. R. in Caſe of the King v. the Biſhop of Wincheſter & al.——S. C. cited Hob. 75. in Caſe of the **King v. the Biſhop of Norwich**; for the Perſon being diſabled by Statute, could not be enabled by the King.———Serjeant Hawkins ſays, that a Perſon diſabled by the aboveſaid Statute cannot be reſtored to his Ability at any Time during his Life, by any Grant or Diſpenſation whatſoever. 2 Hawk. Pl. C. 169. cap. 67. S. 5.

15. It was reſolved by the Lord Ch. J. and Lord Chancellor Egerton, upon mature Deliberation, and hearing Counſel, that the King could not diſpence with the *Diſability upon* the Statute 5 *E.* 6. cap. 16. of *Buying Offices*. 3 Inſt. 154. cites 12 Jac. Sir Arthur Ingram's Caſe, alias Sir Robert Vernon's Caſe.

16. J. H. and N. H. his Son, having a *Joint-patent of Clerks of the Court of Wards*, with an expreſs Proviſion, *that if one of* them *ſhould die, the other ſhould enjoy the whole Non Obſtante the Statute.* J. H. being dead, Sir S. L. moved the King that he might be joined by Patent to N. H. the Survivor, upon Opinion that by Words of the Statute 32 H. 8. (viz. that there ſhould be two Clerks to be named by his Highneſs to be Clerks of the ſaid Court.) This was referred by his Majeſty to Viſcount Wallingford, Lord Hobart, and Sir James Lea Attorney of the Court; and they certified the King (having heard Counſel, and ſeen the former Grants ever ſince the Erection of the ſaid Court) that the

King

King was not bound to the Number, but * might with a Non Obſtante diſpenſe with it; but the Auditor's Place being *judicial*, and appointed to be in two, cannot be in leſs, becauſe the Subject has an Intereſt in the Judicature, which cannot be committed either to more or leſs than the Law of their Creation has eſtabliſhed. Hob. 214. Hare v. Leiſure.

* Becauſe this *Office* is *miniſterial*. Jenk. 292. pl. 34. S. C.

17. The Statute 3 *Jac.* 1. *cap.* 4. *which gives Forfeitures for Recuſancy ſays, S.* 11. *That the King may refuſe the Penalty of* 20 *l. a Month, and take Two-third Parts of his Lands and Leaſes which ſhall be or come to ſuch Offenders, till he or they ſhall conform, in Lieu of the* 20 *l. Monthly; and S.* 12. *is, That the* King ſhall not leaſe *the ſaid two Parts* to the Recuſant, or to any other for a Recuſant's Uſe.——The Lord Brudnel was a Recuſant Convict. The Earl of W. took a Leaſe of the King of two Parts of his Eſtate, in Truſt for the Recuſant, and with a Non Obſtante of the Act above mentioned; but becauſe *the Truſt did not appear by any Matter of Record*, the Court would not take Notice of it by any Matter Dehors; but their Opinion was, That the King in this Caſe *could not diſpenſe, becauſe* he was *diſabled by the Act* to grant &c. Hard. 110. Paſch. 1658. in the Exchequer. The Attorney General v. Earl of Weſtmoreland.

18. In Debt upon the Statute 12 *Car.* 2. *cap.* 25. which *enacts, That no Perſon ſell Wine by Retail, unleſs enabled according to this Statute, under the Penalty of* 5 *l. for every ſeveral Offence.* Upon*Nil Debet pleaded the Jury find the *Statute* 7 *E.* 6. *cap.* 5. *That none ſell Wines without Licence, according to the ſaid Act.* Then they find *the Patent of* 9 *Jac. incorporating the Vintners of London, and that ſuch as ſhould be free of their Company might ſell Wine by Retail, or in Groſs, within three Miles of London &c. in their Houſes or elſewhere, Non Obſtante the ſaid Statute* 7 *E.* 6. *or any other Statute made or to be made.* They likewiſe find the Statute of 12 Car. 2. 25. and a *Proviſo therein not to prejudice the Vintner's Company, but that they may uſe and enjoy ſuch Liberties as they have heretofore lawfully uſed.* It was argued, That the Patent was void in its Creation. 1ſt. In reſpect of the Perſons to whom it was made, ſc. a † Corporation, which never was ſubject to an Uſe, and therefore not capable of ſuch a Truſt as to make whom they pleaſe Free of their Company, or exempt them from the Law, and in Effect to delegate to them a Power to exempt whom they pleaſe from the Law, and thereby delegate an *Exemption to every one who ſhould be Free of their Company.* 2dly. Becauſe it was *for ever*, and ſo not good in Point of Time. 3dly. That it was void, in Reſpect of the Places *extending to great Part of the Realm*, whereas *Diſpenſatio eſt provida Relaxatio Juris pro Neceſſitate penſata.* Thurland, Windham, Ellis. and Turner Ch. Baron held, that the Patent was never good; and grounded themſelves much upon the Reaſons before alleg'd: But the 8 others held it good in its Creation. Lev. 217. Trin. 19 Car. Thomas v. Sorrel.

See S. C. argued by the Judges Freem. Rep. 85. pl. 105. and Ibid. 115. pl. 137. Ibid. 128. pl. 150 ſays, that Turner held that the Patent was good in its Creation. And Ibid. 137. pl. 159. argued by the two Chief Juſtices.——S. C. argued by Vaughan Ch. J. Vaugh. 330. to 359. wherein Matters which may or may not be diſpenſed withal by the King's Prerogative, are very minutely treated of.——Hard. 443. to 451. ſeems to be S. C. by Name of Thomas v. Waters.——S. P. Ibid. 464. Thomas v. Boys.——* Turner Ch. B. took Exception to this Plea; for the Defendant *ought to have pleaded the Special Matter*; becauſe when an Information or Action is brought upon any Statute, if the Defendant be diſcharged by any Proviſo therein, he may give it in Evidence; but if it be any Foreign Matter, even tho' it be a Licence purſuant to a Proviſo of that Statute, he muſt plead it. And Hale ſaid, that a Licence purſuant to a Proviſo, is all one as a Proviſo, and ſo might be given in Evidence. Freem. Rep. 129. Mich 1673. **Thomas v. Talmarſh**, but ſeems to be S. C. And ſays that this Exception was not taken Notice of by Counſel or Judges till Turner argued, and who was the 8th Judge that argued.

† Many Precedents of Licences to Corporations, Non Obſtante Statutes, are mentioned Vaugh. 252 to 254.

19. *But* it was agreed, That *this Non Obſtante* in the Patent of King James *could not diſpence with the Statute of Car.* 2. *made after*, notwithſtanding the Words (*Or any other Statute made or to be made.*) Ibid. 218.

20. *And* it was agreed by all (except Thurland) That the *Proviſo in the Statute of* 12 *Car.* 2. *exempts the Vintners* of London out of this Statute,

tute, becauſe it was a Privilege lawfully uſed by them before the Statute; and thereupon the Record was remitted out of the Exchequer into B. R. and there, upon Motion of Levins, Judgment was entered accordingly. Ibid. 221.

21. 1 *W. & M. Stat.* 2. *Cap.* 2. *S.* 1. Enacts that *no Diſpenſation by Non Obſtante of any Statute ſhall be allowed, except a Diſpenſation be allowed in ſuch Statute, and except in ſuch Caſes as ſhall be ſpecially provided for during this Seſſion of Parliament.*

22. The Statute of 5 *Eliz. enables Mariners to take Apprentices, and enacts that ſuch Apprentices ſhall be bound by their Covenants, as Apprentices in London are by their Cuſtom there, the Indentures being inrolled in the next Vill Corporate.* It was reſolved, That the King cannot alter the Place of the Inrolment, but they ſhall be inroll'd according to the Statute, otherwiſe the Covenants ſhall be at Common Law, and the Apprentices not bound by them. 3 Lev. 389. Paſch. 6 W. & M. C. B. Poulſon v. .....

(Y. a. 2) Non Obſtante. *Good.* In what Caſes the King may diſpenſe.

Br. Prerogative, pl. 37. cites S. C.—S. P. Tho' there are Statutes which ordain that ſuch Patents ſhall be void, yet with a Clauſe of Non Obſtante they are good, and to be allowed.

1. THE King *granted the Shrievalty* of the County of N. *to the Earl of N. for Term of Life, with all Profits* thereunto appertaining, *rendering* 100 *l. per Annum*, abſque aliquo [alio] reddendo: And it was agreed, that it may be granted for Term of Life, or in Fee; and there was a Clauſe of *Non Obſtante to diſpence with the Statutes of* 28 *E.* 3. *cap.* 7. *and* 43 *E.* 3. *cap.* 9. which will, that none ſhall be Sheriff above a Year. Br. Patents, pl. 109. cites 2 H. 7. 6.

2. And per Ratcliff, The King by his Prerogative may by the Clauſe of Non Obſtante diſpence with *the Certainty and Value of the Land* granted by Patent, and of *the Shipping of Wool*, or *of Charters of Murder* being void for not finding Sureties. Br. Patents, pl. 109. cites 2 H. 7. 6.

And tho' the *Statutes ſay, that ſuch Patents ſhall be void, altho' they have a Clauſe of Non Obſtante*, yet a Patent of ſuch Things, with Words of Non Obſtante any Clauſe derogating from the Non Obſtante, will make the Patent good: The Reaſon of the Law is, that the King by his Royalty is truſted with the Government, Pardons and publick Buſineſs; particular Caſes may happen which deſerve Remiſſion, upon Conſideration of Circumſtances. By all the Judges in the Exchequer Chamber. Jenk. 173. pl. 43. cites S. C.

Serjeant Hawkins ſays, Where a Statute is expreſs, that the King's Charter againſt the Purport of it, whether with or without a Clauſe of Non Obſtante, ſhall be void, it is ſaid by Sir Edward Coke, that no Clauſe of Non Obſtante can diſpence with it, unleſs to tend to reſtrain ſome Prerogative, ſolely and inſeparably incident to the Perſon of the King, as the Right of Pardoning, or of Commanding the Service of the Subject for the Publick Weal, which being, as he ſeems to argue, founded on the Law of Nature, are ſo far inſeparable from the King, that by a Clauſe of Non Obſtante he may diſpenſe with any Statute whatſoever, which tends to deprive him of them. And on this Ground the Reſolution of the Judges in the Year-Book of H. 7. is ſaid to be maintainable, whereby it was adjudged without any Difficulty, That where the Statute of 23 H. 6. cap. 8. expreſsly enacts, That Patents to Sheriffs to continue longer than a Year, ſhall be void, and the Party diſabled to bear the Office of Sheriff, notwithſtanding any Clauſe of Non Obſtante, yet the King by the Clauſe of Non Obſtante, might make a good Patent of ſuch Office for Life, which is in Effect to ſay, that let there be never ſo good Reaſons for the making a new Law for the Reſtraint of the Prerogative in any Particular relating to the Service of the Subject, yet it is not in the Power of the Legiſlature to make ſuch a Law; and yet no one will deny, that wherever the Law of Nature leaves a Matter indifferent, there the Law of Man ought to prevail: Neither is there any Pretence to ſay, that the King has a Right by the Law of Nature to appoint Sheriffs, ſince it is plain that before the Statute of 9 E. 2. the Freeholders choſe them, unleſs they had a Fee in their Office. And what Reaſon can there be, that the Statute Law, which gives the Crown the Power of making Sheriffs, may not alſo qualify that Power, as ſhall be thought convenient? But it is obſervable, that the Reſolution above mentioned does not go upon any particular Reaſon, which may diſtinguiſh the Caſe of a Sheriff from any other Caſe, but only on the King's Power by Non Obſtante to diſpenſe with the Statutes concerning the Tranſporting Wool, the Pardoning of Murder, and the Expreſſing the Quantities of the Land granted by the King's Patents, and ſuch like, which becauſe they may be diſpenſed with by Clauſes of Non Obſtante, it is taken for granted, that the Statute of 23 H. 6. might as well be diſpenſed with by them, as if it were a plain Conſequence, that becauſe Statutes which ſay nothing concerning the Clauſe of Non Obſtante may be diſpenſed with by it, therefore a Statute

which

expreſsly provides againſt it, may alſo as well be diſpenſed with by it. 2 Hawk. Pl. C. 390. 391. cap 37. S. 29.

3. The King cannot diſpenſe with any *to do a Nuſance in the Highway*; and if he does, ſuch Diſpenſation is void. Dav. Rep. 75. a. Paſch. 9 Jac. C. B. in the Caſe of Commenda, cites 11 H. 7. 12.

4. Tho' the King may diſpenſe with a *Statute*, which *prohibits an indifferent Thing to be done*, yet he *cannot change the Common Law* by his Patent. Dav. Rep. 75. b. cites 37 H. 8. Br. Patents 100. 6 H. 7. 4.

Where a Statute is made only in Eaſe of the King, 2 Mod. 263 and not to abridge his Prerogative, it was adjudged that the King may diſpenſe with it. Trin. 29 Car. 2. in the Exchequer, Arris v. Stukely.——But the King cannot diſpenſe with *the Common Law* with a Non Obſtante. Dav. Rep. 75. b. Paſch. 9 Jac. C. B. in the Caſe of Commenda; cites 4 Coke 35. Bozom's Caſe.

5. The *Office of the Alnager* was by ſeveral Statutes prohibited to be *granted without a Bill ſealed by the Lord Treaſurer*, and ſent by him to the Court of Chancery, as had been accuſtomed, or otherwiſe it ſhould be void. Queen Mary granted the ſaid Office de Gratia ſpeciali, certa Scientia, & mero Motu, to one Ward for 21 Years, without any ſuch Warrant. Adjudged by all the Juſtices de Banco, that the Grant was void, tho' a Clauſe of Non Obſtante to any Statute is contained therein; and that by Reaſon of its not being ſhewn to the Court that ſuch Clauſe was in the Grant. Dyer 303. pl. 48. Mich. 13 & 14 Eliz. Ward's Caſe.

S. C. cited Hob. 146. Mich. 10 Jac. Per Hobart Ch. J. in Caſe of Colt and Glover v. the Biſhop of Coventry and Litchfield.

6. When the Words of a *Grant* are *not ſufficient ex vi Termini to paſs the Thing granted*, but the Grant is utterly void, there any Non obſtante cannot make the Grant good; *but* in Caſe of *Grant of Land* which is *in Leaſe* for Life, or for Years, there, by the Grant of the Land *the Words are* ex Vi termini *ſufficient to make the Reverſion paſs*; but the Law requires that the King be not deceived in the Thing granted, and therefore this is ſupplied by a Non Obſtante. 4 Rep. 35. b. 36. a. Mich. 26 & 27 Eliz. B. R. in Bozoun's Caſe.

S. C. Godb. 35. Mich 27 Eliz. B. R. by Name of Futter and Borome's Caſe.

7. When the King *by the Common Law cannot* in any Manner *make a Grant*, there a Non Obſtante of the Common Law will not, againſt the Reaſon of the Common Law, make the Grant good. But when he may lawfully by the Common Law make the Grant, but the Common Law requires, that he be ſo inſtructed that he be not *deceived*, there a Non Obſtante ſupplying it ſtands with the Reaſon of the Common Law, and ſhall make the Grant good. Reſolved 4 Rep. 35. b. Mich. 26 & 27 Eliz. B. R. Bozoun's Caſe.

S. C. cited by Hobart Ch. J. Hob. 229. in Caſe of Needler v. the Biſhop of Winton. ——S. C. Godb. 35. Mich. 27 Eliz. by Name of Futter and Borome's Caſe.

8. If the *King grants a Protection in Quare Impedit, or Aſſiſe*, with Non Obſtante of any Law to the contrary, this Grant is void; for by the Common Law Protection does not lie in any of thoſe Caſes for the Loſs which may accrue to the Plaintiff by ſuch great Delay; and therefore the Non Obſtante cannot avail, when by the Common Law the King cannot grant it. Reſolved 4 Rep. 35. b. Mich. 26 & 27 Eliz. B. R. in Bozoun's Caſe.

S. C. Godb. 35. Mich. 27 Eliz. B. R. by Name of Futter and Borome's Caſe.

9. A. pleaded his Pardon for the Murder of B. wherein the King pardoned *Feloniam & felonicam Interfectionem* Non Obſtante the 13 *Rich.* 2. before which Statute Murder was pardonable by the Name of Felony, which was adjudged good; but if it had been without a Non Obſtante, it would have been void, becauſe by that Statute the Pardon of Murder is prohibited. Mo. 752. pl. 1033. Hill. 1 Jac. Lucas's Caſe.

S. P. 3 Mod. 37. 38. Mich. 35 Car. 2 B. R. The King v. Coury and O'brian, where ſuch a Pardon was held good by the whole Court; and Jeffries Ch. J. ſaid, that he had propoſed this Caſe to all the Judges of England, and they were all of the ſame Opinion; and that he remember'd Dudley's Caſe, where a Pardon in general Words was allowed.

Serjeant Hawkins ſays, It ſo fully appears from the expreſs Words of 13 R. 2. That the King's *Pardon of Murder, Rape or Treaſon cannot be good without a Clauſe of Non Obſtante*, that he ſays he does not know that it has ever been diſputed. But it has been often formerly adjudged, That a Murder might be well pardoned under the general Deſcription of a Felonious Killing, if the Charter had the Clauſe of Non Obſtante of this Statute; which Conſtruction ſeems in a great Meaſure to evacuate ſo excellent a Law, by barely changing the Form of the Charter; but it ſeems difficult to give a good Reaſon why this Statute ſhould ſo eaſily be evaded, which was made for the Prevention of ſuch great Miſchiefs, and no way tend to aboliſh the King's Prerogative, but only to put ſuch a Reſtraint upon the Abuſe of it, that every one muſt own it to be reaſonable. But if ſuch Opinions were founded upon the King's Power of diſpenſing with Statutes, they ſeem to have been of little Force ſince the Statute of 1 *W. & M. Seſſ.* 2. *cap.* 2. by which it is declared and enacted, *That from and after that Seſſion no Diſpenſation by Non Obſtante of, or to any Statute, or any Part thereof, ſhall be allowed* &c. 2 Hawk. Pl. C. 386. cap. 37. S. 17.

Vaughan Ch. J. ſaid, That the Diſtinction between *Malum Prohibitum* and *Malum in ſe*, was of little Uſe, if not rightly underſtood; for every Action in it ſelf is good, and the Evil of it is, that it is prohibited by ſome Law; for Sin is the Tranſgreſſion of a Law. But he ſaid, 1ſt. That what we call *Malum in ſe*, is either that which the very Term implies to be Unlawful, as Murder is Unlawful Killing, Adultery is Unlawful Copulation; and theſe can by no Law be made Lawful: and much leſs can the King diſpenſe with them; for ſuch Laws would certainly be void, becauſe there is a Contradiction in the very Term; for it is impoſſible that Murder, which is the Unlawful Killing of Man, ſhould be Lawful, tho' a Law might be made that it ſhould be Lawful for ſuch and ſuch Cauſes to take away the Life of a Man, which to do, as the Law ſtands now, would be Murder. And a Law might be made, that ſhe that is the Wife of A. ſhould be the Wife of B. and then it would be no Adultery for B. to lie with her. 2d. Another Sort of *Mala in ſe* are ſuch as the Law of the Land doth admit to be prohibited *Jure Divino*; for theſe can, by no Human Law, be diſpenſed withal; for whatſoever may be made Lawful by any Human Law, is not *Malum in ſe*. The true Difference where the King may diſpenſe, and where he may not, is not when it is *Malum in ſe*, and when it it *Malum Prohibitum*; for there are ſome *Mala Prohibita* by Statute, that the King may diſpenſe with, and others that he cannot. Freem. Rep. 137. 138 Hill. 1673. in C. B. Thomas v. Sorrell.

10. The King may diſpenſe with *Malum Prohibitum* before the Offence is committed, and pardon it after it is committed; but he *cannot* diſpenſe *with Malum in ſe before it is committed*, but he may pardon it afterwards. By all the Judges of England. Jenk. 307. pl. 83. cites Hill. 2 Jac. 7 Co. 36. b. &c. The Caſe of Diſpenſations.

Neither doth it make any Difference, when the *Law* diſpenſed with is *Capital*, or when it is leſs *Penal*; for there are ſome Capital Laws that he may diſpenſe with, as 3 Inſt. 74. Freem. Rep. 138. Thomas v. Sorrell.

11. A *Law which prohibits a Tort* and Injury *to a third Perſon*, cannot be diſpenſed with. Dav. Rep. 77. a. Paſch. 9 Jac. C. B. in Ireland, in the Caſe of Commenda.

12. Upon a Purview in the Statute of Weſtm. 2. cap. 10. there was great Queſtion whether the King might diſpenſe with that Law, and *give a further Day* than is thereby preſcribed; and in the End it was reſolved that he might for the Advancement and *Furtherance of Juſtice*. 2 Inſt. 377.

But ſee 1 W. & M Seſſ. 2. cap. 2.

13. The Statutes of 2 *E.* 3. 10 *E* 3. 14 *E.* 3. 13 *R.* 2. ordain that the King's Pardon of *Notorious Felonies*, *Rapes*, *Murders*, ſhould not be granted or allowed, altho' it hath the Words of Non Obſtante any Statute; yet Patents of Pardons of ſuch Offences were allowed with a Non Obſtante any Statute, and notwithſtanding any Cauſe to defeat the Non Obſtante. Mr. Jenkins ſays, In his Time no ſuch Pardon was paſs'd and allowed (that he ever heard of) without the *Judges Certificate, before ſuch Pardon was granted*. If any ſuch Pardon be pleaded before any *Judge*, he ought not to be *Tam fracti abjectique Animi*, to allow it immediately; if he does ſo, he *is not worthy to be a Judge*; he ought to reprieve the Priſoner, and ſignify the Circumſtance of the Offence to his Majeſty: And upon this Right ſhall be done with Regard to the Publick Good. Jenk. 308. pl. 84.

14. A Non Obſtante in the Patent helps the *Non-recital of Leaſes of Record*. Jenk. 303. pl. 77. Baron Blague's Caſe.

15. The King cannot diſpenſe with the Laws of *Maintenance*, *Forcible Entries*, carrying *Diſtreſſes out of the Hundred* &c. the Reaſon is not becauſe they are *Mala in ſe*, but becauſe the Party that is grieved hath by the Law an Action given him; for it is not *Malum in ſe* to maintain a lawful Suit, nor to enter forcibly where a Man hath Right &c.

&c. Per Vanghan Ch. J. Freem. Rep. 138. 139. Hill. 1673. C. B. Thomas v. Sortell.

16. There are ſome Caſes wherein the King cannot diſpenſe. 1ſt. *Mala in ſe*, ſuch Things which by the Law of God or Nature are evil, antecedently to any Human Law; nay, the King cannot diſpence with a Law made for the Puniſhment of any ſuch Offence, as a Rape is Felony by the Law, the King's Diſpenſation will not make it none, and that anſwers the Caſes of * Simony. 2dly. Where the *Subject hath a particular Intereſt or Damage*; and therefore the King cannot diſpenſe with a Nuſance, and the Statute of Uſury. 3. Where there is a *Precedent Diſability*; and therefore where a Man * buys any Office within the Statute of E. 6. the King's Diſpenſation will not avail him, becauſe by the Contract a Diſability is created in him. Per Herbert Ch. J. But if he got the Diſpenſation before, and contract afterwards, it ſeemed to him that it was good. And he ſaid he knew no Caſe that did not come under one of theſe Heads, but that the King could diſpenſe with it. Freem. Rep. 493. Paſch. 1682. in Sir Edward Hale's Caſe.

* S.P. By Vaughan Ch. J. Freem. Rep. 139. in Caſe of Thomas v. Sorrel.

17. H. 8. granted the Manor of S. with the Appurtenances, and then followed theſe Words, viz. *All which are of ſuch a yearly Value, as is expreſs'd in ſuch a Particular*, with a *Non Obſtante of any Miſrecital of the true Value, or that they were of greater Value.* The Value was not truly expreſs'd in the Particular; but Hale Ch. B. held the Grant good; he ſaid that the Reaſon why a Miſtake in the Conſideration, or in the King's Title, or the Non-recital of an Eſtate or Leaſe in Being, ſhall vitiate the King's Patent is, becauſe by his Prerogative he ought to be truly informed of his Caſe; but it is otherwiſe in the Caſe of a common Perſon, whoſe Grant is to be taken moſt ſtrongly againſt himſelf, and that here the Non Obſtante aids thoſe Defects; and it is the proper Office of a Non Obſtante to do ſo, as appears in 4 Rep. Bozoun's Caſe; and that without Doubt, if there had been ſuch a Non Obſtante in the Patent in Arthur Legate's Caſe after the Clauſe, Quæ quidem omnia ſunt concelata, Non Obſtante that they are not concealed, all would have paſs'd which was comprized in the Patent; to which all the Court agreed. Hard. 231. Trin. 14 Car. 2. in the Exchequer. The Attorney General v. Hungate.

18. 14 *R.* 2. enacted, That *no Cuſtomer or Comptroller ſhould have any* Office in the Cuſtoms for Life, *but only during the King's Pleaſure.* In 12 Car. 2. the King *granted* the Office of Comptroller of the Cuſtoms in the Port of Exeter to R. S. and T. S. Durante beneplacito. R. S. died. Two Years after the Death of R. S. the King granted the Office to A. [for Life, as it ſeems, tho' it does not appear in the Caſe] *with a general Non Obſtante of all Statutes*, but without any Mention of this Statute in particular; and it was inſiſted that this Statute being made for the Publick Good, the King cannot by any Non Obſtante diſpenſe with it. But afterwards the Court gave Judgment for the Plaintiff, and held that the King might diſpenſe with this Statute; for the *Subject had no Intereſt, nor was he any ways concerned in the Prohibition*; that it was made only for the Eaſe of the King, and not to abridge his Prerogative; and that the General Clauſe of Non Obſtante aliquo alio Statuto was ſufficient. 2 Mod. 260. 263. Trin. 29 Car. 2. in the Exchequer. Arris v. Stukely.

19. *And* by the like Reaſon he might diſpence with the Statute of 4 *H.* 4. 24. *That a Man ſhall hold the Office of Alnager without a Bill from the Treaſurer.* Ibid.

20. *And* with the Statute of 31 *H.* 6. 5. *That no Cuſtomer or Comptroller ſhall have any Eſtate certain in his Office.* Per Cur. for the Reaſons above. Ibid. in the Caſe of Arris v. Stukely.

21. In many Caſes the Diſpenſation of the King by a Non Obſtante is good; As where a Statute preſcribes the Form of the King's Grant, where it doth *not directly* prohibit a Thing, but only under Pain of a For-

Forfeiture; but if it be *direct & pro Bono Publico*, there a Non Obſtante is not good; he can't diſpence with the Statute of 31 Eliz. againſt Simony; for the Party being diſabled by an Act of Parliament, can't be enabled by a Non Obſtante. He can't diſpence with the Statute of Leaſes of Eccleſiaſtical Perſons, nor with the Juriſdiction of the Admiralty encroaching on the Common Law; for the *Foundation* of a Non Obſtante *is* in the King's Prerogative, and is *current in his Grants*; but in thoſe Statutes the Subject has an Intereſt. Arg. 2 Mod. 261. Trin. 29 Car. 2. in Exchequer. in Caſe of Arris v. Stukely.

(Z. a.) Officers of the King. What Things they may do Ex Officio.

See (F. b.) pl. 1. & 9. and (G. b.) pl. 1.——Mo. 476.

1. NO Officer which the King has, nor all together, may Ex Officio diſpoſe of the King's Treaſure, tho' it be for the Honour or Profit of the King himſelf. Co. 11. Count *Devon* 91. b.

They cannot *without the King's own Warrant.* 11 Rep. 92. Earl of Devonſhire's Caſe.

(A. b.) *Seals.* The *Antiquity* of the Seals.

1. MICH. 14 Jac. B. R. upon Evidence at the Bar in a Caſe between Sir *Carew Reynell and Whitemore*, where Iſſue was, Whether the Abbot of Weſtminſter, before the Diſſolution, held Plea of all Actions perſonal under 40 s. (which Court, after the Diſſolution was granted to the Dean and Chapter of Weſtminſter) there was ſhewn in Evidence an Inſpeximus by R. 2. of the Patent of King Edward the Confeſſor, by which he granted to the Abbot of Weſtminſter Socam & Sakam (hoc eſt, Conuſance of Pleas) and at the ſame Time a Patent of King William the Conqueror was ſhewn, Ann. 10. of his Reign, well wrote, and ſealed with a fair Seal of Wax, which had an Inſcription; and upon the one Part of the Seal is the Image of a * Man having an Ear of Corn in one Hand, and a Croſs in the other Hand; and upon the other Part of the Seal is the Image of a Man riding upon a Horſe; and by this Patent he confirms the Privileges, granted by the ſaid Patent of Edward de Soca & Saka; and thoſe Privileges were confirmed by diverſe Popes, as was written upon the Back of this Patent, ſcilicet, By Innocent the 2d. by Eugenius the 3d. by Adrian, Alexander and Clement. Nota by thoſe Patents the Antiquity of the Law of Patents with Seals. Mr. Floyer of Devon has a Grant of Land by Rivers Earl of Devon under his Seal of Wax fair and laced, in Time of King Stephen, and a Confirmation of it by another of the Earls, in Time of King John.

* Fol. 181.

2. Vide Speed. 415. 418. b. ſays, that William the Conqueror uſed to ſeal his Charters, which was circumſcribed of one Part, that he was Normannorum Patronum, and of the other Part, that he fuit Rex Angliæ.

3. William the Conqueror granted to the City of London their ancient Liberties, by a Charter ſealed with green Wax. Speed. 424. b.

4. And another Charter of his is there cited, the Wax whereof was bitten with his Tooth in Token of Sooth.

5. The Saxons were wont to ſeal with guilded Croſſes, and ſuch like Marks. Speed. 424.

6. R. 1. sealed his Charters with a Seal of Arms, and he was the first who sealed with a Seal of Arms. Speed. 479.

7. R. 1. upon his Return from Jerusalem changed his Seal; for where before it was 2 Lions Rampant Combating, now he changed it into three Lions Passant. Speed. 479.

8. There is in the Study of Sir Robert Cotton a Patent (which he had seen) of King William the Conqueror, under such Seal as is above said, to be put to the Grant to the Dean and Chapter of Westminster, which was made to the Abbot of Battel, and which was the Charter of their Foundation. And there is another Charter of King William Rufus under his Seal to the same Abbot. Vide Janus Anglor. 67. 68. of the Antiquity of Seals of War ex Relatione Seldeni.

9. On the 11th Day of June 43 E. 3. the King's Great Seal was safely laid up, and *another Seal*, engraven *with the Stile of France*, was taken and used, and sundry Patents, Charters and Writs therewith sealed; and the same Day were all other the King's Seals in like Sort chang'd. Prynne's Cott. Rec. Abr. 108.

(B. b.) The *Diversity* of Seals, and what.

1. THERE is Mention made in ancient Books and Records of Writs under the Targe, and without the Targe. 17 E. 3. 59. b. A Man had Writ of Scire facias without the Targe.

2. It seems that by Writs under the Targe is intended Writs sealed with a Part of the Great Seal of England, scilicet, that Part which has the Sculpture of the Targett, and is so called from the Picture of the Target, which is made upon the Wax of the Writ by the said Part of the Seal.

3. There is Mention made of Writs sub pede Sigilli, as of Outlawries.

4. It seems by this is intended, when the Writ has the Print of the Foot of the Great Seal.

5. There is Mention made sometimes of Writs under the Half Seal, as 8 El. cap. 5. where it is enacted, That all Sentences given in a Marine Cause upon Appeal to the Queen in Chancery by such Commissioners or Delegates, which shall be nominated by the Queen and her Successors, by Commission under the Half Seal, as it hath been heretofore used in such Cases, shall be final &c.

6. There is *a Seal for the County Palatine of Lancaster, and another for the Dutchy* (i. e.) such Lands as lie out of the County Palatine, and yet are Part of the Dutchy; for such there are, and the Dukes of Lancaster held them, but not as Counts Palatine, for they had not Jura Regalia over them. It is for this Reason that the King may make a Corporation by the Seal of the County Palatine, within the County Palatine; but he cannot grant or make a Corporation by the Dutchy Seal within the Dutchy Lands. 3 Salk. 111. Hill. 2 W. 3. B. R. in Case of Cotton v. Johnson.

S. P. 2 Lutw. 1236. Pasch. 9 W. 3. in Case of Astill v. Clerk.

Fol. 182.

(C. b) King. Grant. Seal. *What* Things *ought to be* granted *under the* * *Great Seal.*

See (P. a. 6) pl. 10. — (E. b 2) S. d 3) * The Great Seal *is Clavis Regni.* 2 Inſt. 552.

1. BY the Common Law **no Grant of the King is available or pleadable but under the Great Seal of England. Co. 2. Lane's Caſe, 16. b. per Curiam reſolved.**

At the making this Statute the King had three Seals 1. Magnum Sigillum, the Great Seal. 2. Parvum Sigillum, the little or Petit Seal. 3. Signettum, the Signet. The Great Seal is *in the Cuſtody of the Lord Chancellor*, or Lord Keeper of the Great Seal; and there is a ſpecial Officer in the Court of Chancery, called Sigillator, who hath the ſealing of Writs, and other Things that paſs the Great Seal. Parvum Sigillum, the little or Petit Seal, after this Time called the Privy Seal; this Seal is in the Cuſtody of the Clerk of the Privy Seal, ſometime called Keeper of the Privy Seal, after called Lord Privy Seal, of whom Fleta ſays thus: Cuſtodi ſigilli privati aſſocientur Clerici honeſti, & circumſpecti Domino Regi jurati, qui in legibus & conſuetudinibus Anglicanis notitiam habeant pleniorem, quorum Officium ſit ſupplicationes & querelas conquerentium audire & examinare, & eis ſuper qualitatibus Injuriarum oſtenſarum debitum Remedium exhibere per brevia Regis. By this ancient Writer three Things are to be obſerved; 1. That the *Clerks Aſſociates* to the Keeper of the Privy Seal are thoſe that we now call the *Maſters of Requeſts*, Magiſtri a libellis ſupplicum, whoſe Office is here lively pourtrayed out, viz. quorum Officium ſit ſupplicationes & querelas conquerentium audire & examinare 2. Of what Quality ought theſe Maſters of the Requeſts to be? They muſt have three Qualities. 1. They muſt be * honeſti & circumſpecti. 2. Domino Regi jurati. 3. Qui in Legibus & Conſuetudinibus Anglicanis Notitiam habeant pleniorem. 3. To what end did they hear and examine the Matters contained in theſe Petitions? Ut eis (id eſt) conquerentibus ſuper qualitatibus Injuriarum oſtenſarum debitum Remedium exhibere per breve Regis. So as their Office was, that being learned in the Law, they ſhould direct ſuch as petitioned to the King to take their Remedy by the King's Writ, that is, by original Writ in the Chancery. And hereby it appears, that this Act is but an Affirmance of the Common Law, for no Writ before this Act could have been ſealed by the Privy Seal. 2 Inſt. 554, 555. cap. 6. — * Fleta. 2 lib. cap. 13. S. 1.

2. 28 *E.* 1. *cap.* 6. *Henceforth no Writ concerning the Common Law ſhall be awarded under the Petit Seal.*

This Act ſays not, That all Writs which concern the Common Law ſhall paſs under the Great Seal, but *no Writs ſhall paſs under the Privy Seal which touch the Common Law*; For it is to be known, that the Court of the King's Bench, and the Common Pleas had, at the making this Statute, ſeveral Seals, whereby they ſealed Judicial Writs. As the *Seal* belonging to the Court *of King's Bench* is in the Cuſtody of the Ch. J. and ſo likewiſe the Seal belonging to the Court of *Common Pleas* is in the Cuſtody of the Ch. J. of that Court, and the Seal belonging to the *Court of Exchequer* is in the Cuſtody of the Chancellor of that Court. Ad Cancellarium Scaccarii pertinet Cuſtodia ſigilli Regis. *Officium Cancellarii eſt ſigillum Regis Cuſtodire, ſimul cum contrarotulis ſuis pro proficuo Regni, and theſe Seals *are Incidents inſeparable to the ſaid Courts* for the ſealing of all judicial Writs &c. which, for Adminiſtration of Juſtice diſtributive to all Men, are reſpectively under the ſaid Seals, *and without which the Courts cannot adminiſter Juſtice*; and therefore the Profits coming of theſe Seals have been letten and demiſed of ancient and latter Times, but the Seals themſelves were never demiſed, or letten, nor could be, nor any other Keeper appointed to be Keeper of them, than has been Time out of Mind. 2 Inſt. 555. cap. 6.— * Fleta. 2 lib. cap. 29.

So of Warrant of Eſſoign de Servitio Regis. Ibid.

3. Note per Cur. Arguendo in Writ of Eſcheat, that *Protection* upon Privy Seal is not good; For it ought to be under the Great Seal. Br. Protection, pl. 13. cites 35 H. 6. 2.

4. 4 *H.* 7. *cap.* 14. *All Grants and Writings of Lands, and other Things pertaining to the Earldom of March, ſhall be under the Great Seal, and not under the Special Seal.*

Ibid. Marg. ſays, It appears ſufficiently, that a Grant under the Great Seal is good; For in the Act is a Proviſo, that Tenure in Capite ſhall be reſerved in all Grants of any * In-

5. The Statute of 27 *H.* 8. of Eſtabliſhment of the Court of *Augmentations* enacted, That all *Patents* to be made *for Life or Years, of any Office concerning the Lands of the Court, ſhall be ſealed with the Great Seal of that Court &c.* The Honour of Petworth in Suſſex was by Act of Parliament within the Survey of that Court. The King granted the Office of Steward, and diverſe other Offices of the ſaid Honor, to the Earl of Southampton for Life by Bill aſſigned, which paſſed under the *Great Seal in Chancery.* And whether this Grant under that Seal was good or not was much doubted, by reaſon of the above Clauſe. Diverſe Serjeants thought it the ſureſt Way to have it under the Seal of Augmentation, becauſe of the Word (ſhall) which is a Word obligatory, and, as it were, compulſory; but ſome thought the Grant under the Seal of the

Chancery

Chancery good in Law ; For Bromley ſaid, That if it be enacted by Parliament, that the youngeſt Son ſhall have Appeal of the Death of his Father, this does † not exclude the eldeſt Son of his Suit, becauſe there are *not any Words of Reſtraint*. D. 50. pl. 1. Mich. 33. H. 8. Lord Southampton's Caſe.

heritance made by the Great Seal, and cites Pulton's Statutes 618 b. —— * [of any ſuch Lands] Raſt. Stat. 358. Paragraph 2. —— † S. P. Arg. and reſolved, that in the principal Caſe in D. 50. a. Demiſe made under the Great Seal of Lands within the Survey of the Court of Augmentation by the Authority of the ſame Book is not void. 11 Rep. 64. b. Mich. 12 Jac. in Dr. Foſter's Caſe.

6. Great Seal ſhall be always *credited*, and where the Certificate under it is not ſtrictly true, there is no Remedy but an Act of Parliament, or by Authority of the Chancellor of England, to cauſe the Parties to bring the ſaid Exemplification with them into *Chancery*, there to be *cancelled*, or remain with &c. as was ſaid in the **Duke of Norfolk's Caſe.** But in Exemplification under the Seal of C. B. or B. R. or Exchequer, it is otherwiſe ; For they have not ſuch Force in themſelves, nor import ſuch Truth ; per omnes Juſt. Dal. 19. pl. 4. 3 & 4 P. & M. Anon.

7. H. 8. ſeiſed of a Manor as Parcel of his Dutchy of Lancaſter, *grants* to the Fraternity of Walden *two Mills* &c. as *Parcel of the ſaid Manor in Fee, reſerving a* yearly *Rent* of 10 l. *and then grants the Manor and Rent* to Ld. Audley *in Fee.* Ed. 6. upon the Diſſolution of the ſaid Corporation, grants the ſaid Mills to the Corporation of the Vill of Walden, reſerving a Rent of 10 l. Nobis Hæredibus & Succeſſoribus vel tali Capitali Domino ad quem &c. de jure pertinebit &c. It was held, that the Manor and Rent were not paſſed together by the Grant to Ld. Audley, but ſevered. For the Manor, with its Rights, Members, and Appurtenances, was granted under the Dutchy Seal, by which the Rent could not have paſſed, and the Rent was granted under the Great Seal, which otherwiſe could not have paſſed at all ; and for this Reaſon it was adjudged, That the Corporation of the Vill of Walden ſhould pay a Rent of 10 l. to the Crown, over and above the Rent reſerved to Ld. Audley, which was not due to him as Capitalis Dominus, by Reaſon of the Severance in the original Grant. Adjudged. Mo. 167. Mich. 26 & 27 Eliz, the Caſe of Saffron Walden.

8. The granting of *Repriſals extraordinary* is always under the Great Seal. 1 Molloy 28. cap. 2. S. 8.

(D. b) What Things *may be* granted under the Great Seal.

1. A Preſentation **to a Church,** the Advowſon of which belongs to the Dutchy of Lancaſter, **may be granted under the Great Seal ; For it is a Flower fallen from the Tree, and not within the Statute of** 3 H. 5. **M.** 10 **Ja. B. between the** *King* **Plaintiff, and the** *Biſhop of Lincoln and King* **Defendants, per Curiam. Trin.** 11 **Ja. B. adjudged ſame Caſe.**

S. C. nor is it Parcel of the Poſſeſſions of the Dutchy, but a Recommendation of the Clerk to the Ordinary, and does not concern the Inheritance; and it was held ſuch Preſentation might be even by Parol. Moor 874 Mich. 11 Jac. —— But ſuch a Grant of a *Ward* of the Dutchy is not good, as has been adjudged. Mo. 874. cites Trin. 8 Jac. Rot. 1811. —— S. C. cited 2 Lutw. 1237. in Caſe of Aſtill v. Clark. —— If the King has an Advowſon in right of the Dutchy, he may preſent thereto in right of the Crown. Cro. J. 248. per Coke J. Trin. 8 Jac. C. B. in Caſe of the King v .... —[Which ſeems to prove the ſame Point, that a Preſentation to a Church, Parcel of the Dutchy, may be under the Great Seal.]

2. But

S. C cited 2 Lutw. 1237. in Case of Astill v. Clark. Brownl. 182. the King v. Emerson, cites M. 10 Jac. S. P. adjudged.

2. But a Grant of the next Avoidance of such Advowson cannot be under the Great Seal, but ought to be under the Dutchy Seal. M. 10. Ja. B. per Curiam.

3 A *Presentation* was made under the Great Seal *to a Church*, which the King had *in Right of a Ward*, and held good; for that he may make such Presentation either under the Seal of the Court of Wards or the Great Seal. Cro. C. 70. Mich. 3 Car. C. B. Stephens v. Potter.

(E. b) What Things done under the *Exchequer Seal* shall be good.

S C. cited Gibb. 293. in Case of Mills v. Keyes.

1. THE King may make a Man his Bailiff of his Manor by Patent under the Exchequer Seal, and it shall be good. M. 5, Ja. B. between *Tomlinson and Benson*, per Curiam.

2. If A. makes a Lease reserving Rent, and after is outlawed, and this found by Inquisition, the King may grant over the Benefit of the Outlawry to a common Person under the Exchequer Seal, and thereupon he may have Account for the Rent incurred after against the Lessee. Mich. 10 Car. B. R. between *Culpepper and Coventry*, per Curiam, upon a special Verdict, and the Court then said, That this was the common Course of the Exchequer. Intratur. Trin. 7 Car. Rot. 835.

On a special Verdict it was found, that the King made a *Lease for Life* under the Exchequer Seal, *Remainder for Life*, &c. *reserving the usual Rent*; and it was objected, that the Lease was not good, because a Freehold could not pass from the King, but by Patent under the Great Seal; but adjudged by all the Justices, that the Lease was good, and for the King's Benefit, that his Lands should not lie unletten. Cro. C. 513. Hill. 13 Car. B. R. Rot. 1252. Kemp v. Bernard.

3. A Lease for Years of Land made by the King under the Exchequer Seal by the Custom of the Court of the Exchequer is good, and shall bind the King; For it has been so Time out of Mind &c, Co. 2. *Lane's* Case. Adjudged. 16 b.

4. 8 H. 6. 34. b. Br. Leases, 71. Nota, that the Order of the Exchequer is to make their Leases by the Word Committimus such Lands Habendum &c. Reddendo such Ferme [Rent] this is a good Lease by the ancient usage there.

Cro C 513. S. C. —Reynolds Ch. B. doubted this Case, and that from the general Tenor of the Books the *Usualty* there must refer to the *Manner of granting*, and taking it so, he knows of no Authority to support such Grant; But if an Office for Life had been *found to be an ancient Office*, and to have been *usually granted under the Exchequer Seal*, it might be good; and the whole Court inclined, that an Office for Life granted must be under the Great Seal; but this being on the first Argument, Ld. Ch. B. said, he did not deliver it as his final Opinion Gibb. 294. in the Exchequer, Trin. 5 Geo. 2. Mills v. Keyes.

5. A Lease for three Lives made by the King of Land Parcel of the Possessions of the Crown under the Exchequer Seal, though the Rent reserved be not averred to be the ancient Rent, yet it is good; Because it is the ancient Usage of the said Court of Exchequer, whereof all other Courts ought to take Conusance without Averment. Mich. 14 Car. B. R. between *Kemp and Burnard*, adjudged per totam Curiam upon a Demurrer. Intratur Hill. 13 Car. Rot. 1252.

6. Co. 10. Prid. & Nap. 12. upon the Statute of 35 El. cap. 3. the Words (Confirmation of Letters under any Seal) are interpreted under the Exchequer or Augmentation Seal.

So where the Queen made a *Lease for Life on Condition to*

7. In an Information of Intrusion upon Demurrer the Case was, that the *Husband devised to his Wife*, who was *an Alien born*, and by a Commission under the Exchequer Seal, she was found to be so; by reason whereof the King was intitled to the Land; but adjudged, that the Inquisition

Inquiſition was void; becauſe this is *Office of Intitling*, which ſhould be under the Great Seal, but an Office of *Inſtruction* or Information may be under the Exchequer Seal. 5 Rep. 52. Mich. 29 & 30 Eliz. in Scacc. Page's Caſe.

be void in Non-payment of Rent, and upon a *Commiſſion* awarded *under the Exchequer Seal*, it was *found*, *that the Rent was not paid*, and thereupon the Queen makes a new Leaſe. Upon a ſpecial Verdict in Treſpaſs, the Plaintiff had Judgment for this Reaſon (among others,) That the Commiſſion under the Exchequer Seal was not ſufficient to find a Condition broken upon a Leaſe for Life, though upon a Leaſe for Years it might be found and in any County being an Office only to inform the Queen. Cro. E. 855. Trin. 42 Eliz. Rot. 641. B. R. Parſlow v. Corn.——cites Paſch. 27 Eliz. Knight v. Beech.

So a ſpecial Verdict in Ejectment found, that the Defendant, being *indicted* on a Statute 13 Eliz. *for a Premunire*, *made a Gift in Tail* of his Lands, *and was afterwards found Guilty*; and then by a *Commiſſion under the Exchequer Seal*, it was *found*, *that he was ſeiſed in Fee* at the Time of the Offence committed, and that the Queen had granted the Lands to one under whom the Plaintiff claimed, and that the Defendant claimed under the Tenant in Tail; Adjudged, that to veſt the Lands in the King there muſt be an Office found by Inquiſition under the Great Seal, without which the Freehold could not be diveſted from the Party, and that the Inquiſition under the Exchequer Seal *is only an Information* to the King and his Officers *to put the Lands in Charge*. Cro. C. 172. Hill. 1 Car. Rot. 828. Groſſe v. Gayer.—Jo. 217. Mich. 5 Car. B. R. S.C. by Name of Groſſe v. Gayne.

8. If any *Manor or Land, of whatſoever Value, comes to the King by Attainder or otherwiſe*, the *Cuſtody* thereof may be granted over under the Exchequer Seal by the Authority of the Lord Treaſurer and Chancellor there without ſpecial Warrant; For it is but a diſpoſing of the Profits, becauſe the King himſelf cannot manure it; And it is always revocable, Si quis plus dare voluerit. Cro. J. 109. pl. 6. Hill. 3 Jac. B. R. per Popham, to which the other Juſtices agreed. Predyman v. Wodry.

So a Leaſe for Years of another's Land, which comes to the King by Attainder, is but a Chattle in him, and vendible for his beſt Profit, and therefore is grantable under the Exchequer Seal; For it is as a Sale; and therefore the Grant is good. Cro. J. 109. Predyman v. Wodry.

(E. b. 2) Dutchy Seal.

1. IN Quare Impedit it was agreed, that there was a Statute H. 5. that no Lands nor Tenements of the Dutchy of Lancaſter might paſs from the King but under the Seal of the Dutchy of Lancaſter; And therefore per Danby, If the *King grants an Advowſon of the Dutchy under the Seal of the Dutchy, and* after *confirms it by the Great Seal*, this is a void Confirmation. Quære. Br. Patents, pl. 88. cites 32 H. 6. 22.

2. Where *Leaſes* are made *of Lands* which are newly *annexed to the Dutchy of Lancaſter, and lying within that County Palatine*; if they are ſealed with the Seal of the Dutchy-Court at Weſtminſter they are void, becauſe by the *Statute* 37 *H.* 8. *cap.* 40. *ſuch Lands* and Poſſeſſions *muſt paſs under the Seal of the County Palatine*, and not under any other Seal, as it ſeems by the Intendment of the Act, though it be not fully ſo expreſſed. Dy. 232. pl. 7. Mich. 6 & 7 Eliz.

3. It was ſaid by the Court, that a *Grant of an Office* of keeping the Courts of the Dutchy Land *by Privy Seal* is not good, but it ought to be by Dutchy Seal. Noy. 53. Ld. Willoughby v. Kempe.

4. A Queſtion was, Whether the *Grant of a Fair* under the Great Seal was good, where the Queen was *ſeiſed in Right of her Dutchy of Lancaſter?* Or in other Words, Whether the Grant of this Fair ſhall be taken as part of the Poſſeſſions of the Dutchy, and ſo not paſs but under the Seal of the County Palatine? And adjudged, that a Grant under the Great Seal was good, becauſe it was a Franchiſe created de Novo by Virtue of the Prerogative Royal, and cannot properly be

called a Poſſeſſion of the Dutchy. And though by the 3 H. 5. it is enacted, that no Grants of the Poſſeſſions of the ſaid Dutchy ſhall be made but under the Dutchy Seal, this is to be intended of Things naturally ariſing from the Lands as Rents, Ways, Mills &c. which favour of the Land, and ſuch Franchiſes were thereby preſerved which were then in being; but this Grant of a Fair is a royal Franchiſe, and created de novo, and ſo not within that Act, and cannot paſs by the Dutchy Seal. 2 Lutw. 1233. to 1237, Mich. 10 W. 3. C. B. Aſtill v. Clarke.

5. Whereupon Treby Ch. J. obſerved, That there was a Difference between Poſſeſſions and Prerogatives; and that *Poſſeſſions* ought to paſs under the Dutchy Seal, as above, but *Royal Franchiſes* (as a Fair &c. *out of the County Palatine, and within the Dutchy)* ought to paſs by the Great Seal. 2 Lutw. 1237. Aſtill v. Clerk.

6. All *Corporations made within the Dutchy* of Lancaſter, *and out of the County Palatine*, by the Dutchy Seal are without Warrant; For to make *a* Corporation is *Jus Regale*, and cannot paſs by the Dutchy Seal; *But within the County Palatine*, the King, by the Dutchy Seal, may make a Corporation, becauſe the Duke of Lancaſter had Jura Regalia; per Treby Ch. J. in delivering the Opinion of the Court. 2 Lutw. 1237. in Caſe of Aſtill v. Clark.

Fol. 183.

(F. b) King, Warrant. Seals, Privy. By what Warrant the King may do Things. * [*Privy Seal.*]

*There are 4 *Clerks* of the Privy Seal, who give their Attendance on the Ld Privy Seal: The principal *Office* and Charge of the Lord Privy Seal, and of his Clerks, *is about ſuch Things as paſs by Bill ſigned, and are to go to the Great Seal*; Of this you may read in the Statute 27 H. 8. cap. 11. & lib. 8. fol. 18. in Caſu Principis. 2 Inſt. 555. cap. 6.

1. *THE Warrant which is ſufficient in Law to iſſue the King's Treaſure ought to be under the Great Seal or Privy Seal. Co. 11. Earle of Devon. 92.

* *Chattels real, and Inheritances* muſt paſs by Grants under the Great Seal; *but Perſonal Things*, as Diſpoſal of Money, Horſes, Armour &c. may paſs by Cuſtom by the Privy Seal. Arg. by Coke Attorney General. Mo. 4-6. pl 681. in Caſe of the Queen v. Dodington. And he vouched a Precedent. 1 E. 4. Rot. 14. Inter Brevia coram Baronibus where the *Sheriffs of London would have excuſed themſelves of* 14 *l. diſpoſed of by Command of the King under his Signet*, and could not, but were forced to obtain a Privy Seal.

The Privy Seal is not ſufficient Authority to diſpoſe of the Queen's *Money* by the Lord Treaſurer, unleſs where it is due; and he that receives Money out of the Exchequer by ſuch Authority is accountable for it, and if he dies, his Executor ſhall anſwer for it as a Debt from the Teſtator. Cro. E. 545. Dodington's Caſe.

Money was never iſſued on the Great or Privy Seal; and anciently there were no Writs of Liberate for the Payment of Money on any Debt due from the Crown, or any Grants made of any Sums, but afterwards they were wont to grant Patents or Privy Seals to the Treaſurer, giving him Authority to iſſue Warrants for the Money. Gilb. Hiſt. of Excheq. 143. —— The Writs were anciently directed to the Treaſurer and Chancellor, and therefore the Warrants are at preſent ſigned by the Treaſurer and Chancellor, and mention the Authority of the Broad Seal by which he iſſues them. Ibid.

S. C. cited 2 Rep. 17. b. Mich. 28 & 29 Eliz. in Lane's Caſe, and ſays, That with this agrees 37 H. 6. 27. b.

2. The King may grant by his Letters Patents under his Privy Seal, to any to make a general Attorney in all Pleas. F. N. 26. b. Regiſt.

Roll. Rep. 7. S. C.

3. The King may grant an Obligation under his Privy Seal, becauſe it is but a Chattel. P. 12 Ja. B. R. between *Cullom and Sherman*, per Coke.

4. 11 E. 1. Rot. Pat. Memb. 13, Rex commisit Waltero de Julburne Officium Cancellarii Regis in Hibernia by Writ de Privato Sigillo.

5. Artic. super Chartas cap. 6. under the Petit Seal, shall not issue from henceforth any **Writ which touches Common Law.** S. C. cited 2 Rep. 17. b. Mich. 28 & 29 Eliz. in Lane's Case.

6. **The King** may discharge a Recognizance forfeited by his Privy Seal. **Mich. 11. Car. B. R.** *Whithering's* **Case, where it was commanded by the King, under his Privy Seal, to discharge the Recognizance and to stay Process, and per Curiam this was sufficient** to stay Process. **But they were divided in this Scilicet whether it be sufficient to discharge the Recognizance. But it was said, that it was usual in the Exchequer to** enter an Exoneretur upon such Privy Seal. Pl. 8.

7. **The King may** command **under his Privy Seal,** that one shall not go over the Sea out of his Realm. **F. N. 85. a.** S. C. cited 2 Rep. 17. b. Mich. 28 & 29 Eliz. in Lane's Case.

8. A Protection or Warrant of an Essoin **is not good under the Privy Seal. 35. H. 6. Co. 2.** *Lane* 17. b. A Discharge of a Debt due to the King **under his Privy Seal is sufficient Discharge in Law. 1 E. 4. Ex parte Rememb. Domini Regis Rot. 14.** Pl. 6. See (G. b.) Pl. 3. — No *Essoin de servitio Regis* can be warranted

by the King under his Privy Seal, nor Protection granted under the Privy Seal, but both of them *under the Great Seal*; because they tend to the great Delay of Justice, if they be not duly obtained; and therefore the Law doth require the Great Seal in these Cases. But a Warrant of the King under the *Privy Seal to issue out Money out of his Coffers is sufficient*; because it concerneth but a Chattel in Possession. And in Matters of small Moment, and which can work no Delay to the Subject, the Privy Seal is sufficient; as to grant a *Supersedeas of a Process in the King's own Case*, or to grant a *Nisi Prius where the King is Party*, or to *allow a Plea against the King*, to *cancel a Recognizance* made to the King, to *discharge a Debt*, or the like. 2 Inst. 555. cap 6.

9. **The Warrant of the King** by Parol **is not sufficient** to issue his Treasure. **Co. 11. Earl of** *Devon.* **92.** Upon the Account in the Exchequer of B. Fulham, the King's Butler, he demanded Allowance of certain Parcels of Wines given by the King to certain Persons, by word of Mouth, without Writing, and it was disallow'd by the Rule of the Court. 4 Inst. 115. — So upon the Account in the Exchequer of Richard Bury, Keeper of the Wardrobe, he demanded Allowance for certain Vessels of Gold and Silver, and certain Jewels given by the King Ore tenus to Isabel, Queen of England; and others to Philip, Queen of England, Consort of the King, et non Allocatur by the like Rule of the Court: For the Gifts by Word in both these Cases are void, which are good Rules to establish the Law in a Case wherein there hath been Variety of Opinions in our Books. 4 Inst. 115.

10. **If the** King presents B. and upon Refusal of him brings Quare Impedit, and pending this, C. * procures of the King a Presentation **of himself,** without mention of the first **Presentation, and after** the King notifies to the Justices where this depends, by his Letters signed, that he had forgot the first Presentation, and says, That his Pleasure is that the first Presentation shall stand firm. **Though this** Notification **was not under the Great Seal, yet it is good. But there they aided themselves also because the Deceit was confessed by the Demurrer. D. 17. El. 339. 47.** See (O. b.) Pl. 3 S. C. — S. C. cited 6 Rep. 29. b. Trin. 44 El. in Green's Case. — [* In the Original is left a large Blank between (C.) and the Word (Procures) which seems to be only an Oversight in the Printing]

11. Ralph Everden, Knt. brought a Writ out of Chancery, and also a Writ of Privy Seal to the Judges *reciting, that he was a Baron, and commanding them to discharge him* to be *of Juries* &c. And by good Advice he was entirely discharged. 6 Rep. 53. in the Countess of Rutland's Case, cites 48 E. 3. 30. b. Br. Exemptions pl. 3. cites S. C.

12. 13 R.

12. 13 R. 2. 1. *No Pardon of Treaſon or Felony ſhall paſs without Warrant of the Privy Seal.*

13. The King by Privy Seal *licenſed the Maſter of the Ordnance to take all unſerviceable Iron Ordnance* &c. upon a Suggeſtion, that thoſe Things had been *uſually taken as Fees* &c. belonging to his Office: Reſolv'd, that becauſe the Office itſelf was but newly erected, and ſo the Privy Seal was obtained upon a *falſe Suggeſtion*, the King was deceiv'd, and by Conſequence the Privy Seal was void. 11 Rep. 89. Hill. 4 Jac. Earl of Devonſhire's Caſe.

Ibid. 395. Paſch. 17. Car. 2. S. C. by Name of *Whitehill*, v. the *Attorney-General*, & al. and the Compoſition made by the Court was confirmed.

14. The *Forfeitures of the Sums on ſeveral Recognizances, for not appearing* at the Seſſions, *was granted to T. S. by a Privy Seal*; and the Queſtion was, Whether the Court of Exchequer could compound thoſe Forfeitures by Virtue of a Privy Seal granted to them before that to T. S. or whether the latter Privy Seal was not a Revocation of the former? But it was held clearly by the Court, that they might, upon good Matter in Equity, diſcharge thoſe Debts, by Virtue of the Statute 33 H. 8. cap. 39. Hard. 334. Mich. 15 Car. 2. in the Exchequer. Mrs. Aſhe's Caſe.

(G. b.) King. Seals. *Signet.*

See (F. b.)

See 4 Inſt. 556. & 2 Inſt. 556. 554

See (F. b.) Pl. 1. — 11 Rep. 92. a.

1. THE Warrant **of the King,** under his Privy Signet, **is not ſufficient** to iſſue his Treaſure. **Co. 11. Earl of** *Devon.* 92.

Hill. 4 Jac. S. C. and ſays, that this appears by a Judgment in the Exchequer, in * Petilian's Caſe. Hill. 1 E 4 Rot. 14. in dorſo, where ſuch a Warrant, under the Privy Signet, to iſſue the Treaſure of the King, was diſallow'd. —— * S. C. cited 4 Inſt. 116. as Hill. 6. E. 4.

See Ne exeat Regnum. (B) 1. — S. C. cited 2 Rep. 17. b. Mich. 28 & 29 Eliz. in Lane's Caſe.

2. **The** Privy Signet **is ſufficient** to inhibit a Man to go over the Sea. **F. N. 85. a.**

—— S. C. cited 11 Rep. 92. a. — The Law in ſome Caſes *taketh Notice of the Signet*; for a *Ne exeat Regnum* may be by the King's Writ under the Great Seal, or by Commandment under the Privy Seal, or under the Signet; for in this Caſe the Subject ought to take Notice as well of the Privy Seal and Signet, as of the Great Seal; for this *is but a Signification of the King's Commandment*, and nothing paſſeth from him. *But* a Warrant under the Privy Signet *to iſſue any Treaſure* is not ſufficient, but there it *ought to be* either *under the Great or Privy Seal.*

See (F. b.) Pl. 8.

3. A Diſcharge of a Debt due to the King **under the** Privy Signet **is not ſufficient. 1 E. 4. Ex parte Rememb. Dominæ Reginæ Rot. 14. Co. 2.** *Lane* 17. b.

4 Inſt. 55.

4. 11 *R.* 2. *cap.* 10. *The King's Signet, or Privy Seal, ſhall not be ſent in Prejudice of the Realm, or Diſturbance of the Law.*

If *Letters Patents* paſs *by Bill ſign'd without Privy Seal*, the Patent is *ſubſcribed Per ipſum Regem*, (and then the Bill ſign'd remains with the Chancellor for his Warrant) and when it paſſes *by Bill ſign'd, and by Privy Seal alſo*, then the Privy Seal remains with the Lord Chancellor, and the Bill ſign'd remains with the Clerks of the Signet, and the Lord Privy Seal has an Extract thereof for him to make the Privy Seal

5 27 *H.* 8. 11. *How and in what Manner the King's Grants, Writings, and Leaſes, ſhall paſs the Privy Signet, the Privy Seal, and the Great Seal, and in what Time they ſhall paſs thoſe Seals; and the Forfeitures ſet upon the Clerks of the Privy Signet and Privy Seal for not doing their Duty; and what Fees they ſhall take for thoſe Writings, and what Fees ſhall be paid to any Perſon for the ſame, and how and where ſuch Writings ſhall come to the Great Seal, with an immediate Warrant, and not paſs the Signet or Privy Seal, and what Fees ſhall be then paid therefore, and how and under what Seals the King's Leaſes, Grants, and Writings of Lands, or Offices of the County Palatine or Dutchy of Lancaſter ſhall paſs; and what Grants, Leaſes, or Writings for the King may be made without his Warrants, and divers Articles at large concerning theſe Matters. For theſe ſee the Statute itſelf at large.*

Seal by, and then the Letters Patents are *ſubſcribed Per breve de privato ſigillo*; and if the Words, viz. (Authoritate Parliamenti) be added, then it paſſes according to the Act of 27 H. 8. cap. 11. And when the *King ſigns the Patent himſelf in the upper Part, and the Signature and the Grand Seal go together*, then it is ſubſcrib'd *Per ipſum Regem* with his own proper Hand. And when it is made *by Authority and Conſent of Parliament*, then it is ſubſcrib'd *Per ipſum Regem et totum Concilium in Parliamento*, or to ſuch Effect. 8 Rep. 18. b. 19. a. Hill. 3 Jac. in a Note of the Reporter, in the Prince's Caſe.

6. At the making of the Statute of 28 E. 1. cap. 6. the King had another Seal, and that is called Signettum, his *Signet*. This Seal is ever *in the Cuſtody of the Principal Secretary*. And there be *four Clerks* of the Signet, called *Clerici Signetti* attending on him. The Reaſon wherefore it is in the Secretary's Cuſtody, is, for that the *King's private Letters are ſigned therewith*. Alſo the *Duty of the Clerk* of the Signet *is to write out ſuch Grants* or Letters Patents *as paſs by Bill ſigned* (that is, a Bill *ſuperſcribed with the* Signature, or Sign Manual, or Royal *Hand of the King*) *to the Privy Seal, which* Bill being tranſcribed and ſealed with the Signet *is a Warrant to the Privy Seal, and the Privy Seal is a Warrant to the Great Seal*. Such was the Wiſdom of prudent Antiquity, that whatſoever ſhould paſs the Great Seal ſhould come through ſo many Hands, to the end, *that nothing ſhould paſs* that Great Seal, that is ſo highly eſteemed and accounted of in Law, *that was againſt Law, or inconvenient*; or that any thing ſhould paſs from the King any ways, which he intended not, *by* undue or *ſurreptitious Means*. 2 Inſt. 555, 556, cap. 6.

7. An *Accountant*, who might have taken the *Benefit of a general Pardon, had*, within the Time limited by the Act, and *before Notice of the Act, accounted* for 700 l. and *given Bond to pay* it. He, by Engliſh Bill pray'd Relief, his Account being pardoned by the Act of Indemnity. Afterwards he obtained a *Warrant* from the King *under the Privy Signet for a Decree by Confeſſion*; but the Court would not allow of it unleſs it were under the Privy Seal &c. Hard. 204 Mich. 13 Car. 2. in the Exchequer. Savory v. the Attorney-General.

8. In an *Information* againſt B. *for Extortion*, an Iſſue was joined; and the Day that the Jury were returned, the King ſent a Writing under his Sign Manual to Sir Tho. Fanſhaw, Clerk of the Crown, to enter a *Ceſſer* of Proſecution. And Palmer, Attorney General affirmed, That the King might ſtay Proceedings; yet notwithſtanding, the Court proceeded to ſwear the Jury, and ſaid, They were not to delay for the Great or Little Seal; whereupon the Attorney entered a *Noli proſequi*. Vent. 33. Trin. 21 Car. 2. B. R. The King v. Benſon.

9. King Ch. 1. granted to P. an Office *Durante beneplacito*. King Ch. 2. ſends his Privy Signet to the Lord-Treaſurer to confirm P. in this Office. It was agreed on all Hands, that the King's Privy *Signet does but only intimate the King's Mind, but can transfer no Intereſt*. Freem. Rep. 71 Hill. 1672. in Canc. King v. Foſter.

10. The Attorney General ſaid, That he never ſaw any *Sign Manual* but what was counterſign'd by the Secretary of State, or the Lords of the Treaſury; but that he had ſeen ſeveral not ſealed with the Signet or Privy Seal, and that he had obſerved this Difference, viz. That *where* the the Sign Manual was *only a Direction* or Commiſſion *to do a farther Act*, as to make out Letters Patents, there *it is only counterſign'd*, but not ſealed. *But where* it is to be *the Principal Act itſelf*, there it is to be *both ſealed and counterſigned*. 9 Mod. 54. Trin. 9 Geo. in Canc. in the Caſe of Vernon v. Benſon.

(G. b. 2.) *Grants* of the King. *Good* or void. In what Caſes in general.

1. THE Queſtion being upon a Grant of the King: It was inſiſted. that the King's Grant ſhall be void in theſe following Caſes, 1ſt, Where he is *miſinform'd* in his Grant, as 1 Rep. 52. 2dly, *Miſrecital* ſhall avoid it. As Mo. 318. Hob. 224. 243. 3dly, If the King be *deceived in Matter of Fact or Matter of Law*, it is void. As 10 Rep. 112. 1 Rep. 46. 4thly, *Want of Form* will avoid the King's Grant. As Hob. 243. 323. 1 Rep. 50. D. 124. 5thly, When the *Thing is in him, or comes to him in another Manner than he ſuppoſes*. As 4 Rep. 34. 1 Roll. 192. Mo. 888. Hob. 170. 1 Rep. 49. 2 Rep. 33. 11 Rep. 90. 2 Roll. 186. Hob. 323. On the other hand it was argued, that the King's Grant ſhall be *good*, 1ſt, If there be an *Original Certainty*, altho' there be a Miſtake after. As 2 Cro. 34. 48. Yelv. 42. 3 Le. 152. 1 And. 148. 29 E. 3. 7. D. 83. Godb. 423. 10 Rep. 110. 10 H. 4. 2. 2dly, There is a Difference when the *Miſtake relates to the Title* of the King, and when it is *but a Denomination of the Thing*. As 9 H. 6. 28. 8 H. 7. 3. 10 Rep. 110. 21 E. 4. 49. 3 H. 7. 6. 38 H. 6. 31. 9 E. 4. 11, 12. 3dly, The King's Grant ſhall be *conſtrued liberally for his Honour*. As Statute 18. E. 1. 6 Rep 6. 1 Rep. 43. Freem. Rep. 172. Trin. 1674. C. B. in the Caſe of the King v. Clarke.

2. A Grant *to an Alien* by the King, or to a *Man outlawed*, or to a *Vill* which is *not incorporated*, are void. And the ſame Law to a *Body* which is *not incorporated*. Br. Patents. pl. 44. cites 22 H. 7. 13 per Keble.

(G. b. 3.) Good. In reſpect of the *Matter or Manner*.

1. 11 *R.* 2. 8. ENacts, That *all Annuities, and other Things given or granted by the King, his Father or Grandfather, with this Clauſe, Quouſque pro ſtatu ſuo aliter duxerimus ordinandum, ſhall be void, if other Things have been afterwards accepted by the Grantees thereof.*

The Miſchief which was at the Common Law was in the Antedating of Letters Patents, before the Warrant

2. 18 *H.* 6. *cap.* 1. Enacts that *every Warrant hereafter ſent by the King, or his Heirs to the Chancellor of England for the Time being, the Day of the Delivery of the ſame to the Chancellor ſhall be entered of Record in the Chancery.* (3) *And the Chancellor do cauſe Letters Patents to be made upon the ſame Warrants, bearing Date the Day of the ſaid Delivery in the Chancery, and not before in any wiſe.* (4.) *And if any Letters Patents be from henceforth made contrary, they ſhall be holden as void, fruſtrate, and none.*

came to the Chancellor to make the Letters Patents, as the Preamble of the Act ſhews. And becauſe no Charter of the King ſhould bear Date before the Time of the Delivery of the Warrant, therefore this Act was made, which remedies the ſaid Miſchief in making the Patent void, which varies from the Day of the Warrant enter'd, that is to ſay, in which it bore Date before the Day of the Entry of the Warrant received. But the Juſtices ſaid, they were reſolved upon two Points touching this Act: 1ſt, That the Patent is good, if no Warrant be made or ſent; for the Great Seal, without other Circumſtances, is ſufficient to the Party to whom the Patent is made, and the Warrant is the Diſcharge of the Chancellor; for thereby he knows the Will of the King. 2dly, That if Patent bears Date after the Day of the Delivery of the Warrant, the Patent in ſuch Caſe ſhall be good, in as much as it is out of the Intent of the Makers of the Act; for no Miſchief in ſuch Caſe was to the King, or to any other which needs any Reformation, but the Miſchief was in the Dating of the Patent before the Delivery of the Warrant, as before is ſhewn. Pl. C. 491. b. 492. a. Mich. 18, & 19 Eliz. Ludford v. Gretton.

By this Statute the Letters Patents bearing Date another Day than the Day of the Entry of the Warrant (where there is a Warrant) is good and not otherwiſe. And if there is a Warrant, and the Day of the Delivery thereof is enter'd, and the Patent has no * Day of the Date, it is good, and out of the Words and Intent of the Act, and reſts at the Common Law. And the Letters Patents by the Common Law were good, notwithſtanding they had no Day of the Date, and now are, notwithſtanding that they have in them no Place of the Date; Per Brown, quod Dier conceſſit. Pl. C. 232. 4 Eliz. in the Caſe of Willion v. Lord Barkley.—— * S. P. 20. H. 7. 8.

3. If the King grants *Conuſance of Pleas* to one N. *and does not ſay before whom it ſhall be held*, the Grant is void; for the Grantee cannot make

make a Judge; *But if he had Court before*, there the Grant is good. Br. Patents, pl. 44. cites 2 H. 7. 13. per Keble.

4. If the King *grants Ward during the Nonage*, and after *ſpecial Livery is ſued*, this is void, and the Grant good. *Contra, where the Grant is, As long as it ſhall happen to be in our Hands*, there a ſpecial Livery made within Age, ſhall avoid the Grant. Br. Patents Pl. 47. cites 3 H. 7. 3. & 8 H. 4. Accordingly,

5. If the King gives Land *to A. and his Heirs Males*, this Patent is void; for if A. has only a Daughter, and dies, and this Daughter has a Son, the Fee ſhould be in Abeyance; for the Daughter is the Heir; and if the Daughter dies, her Son ſhould have the Fee: But the Law will not allow ſuch *ceaſing and reviving* of a Freehold. The Parliament may create ſuch an Eſtate, but it can be done no otherwiſe. By all the Judges of England. Jenk. 199. Pl. 16. cites 18 H. 8.

But the King's Patent of Land *to A. and his Heirs Habendum* to him and *his Aſſigns* is a good Patent, and paſſes the Fee Simple. Jenk. 283. Pl. 14. —— Where the King's Patent *creates a new Eſtate, of which the Law does not take Conuſance, as* where the King gives Land *to A. and his Heirs Males, or* gives Land *to his eldeſt Son, & ipſius & hæredum ſuorum Regum Angliæ filiis primogenitis in regno Anglorum hæreditario ſucceſſuris.* Theſe Patents are void. Jenk 304. cites 18 H. 8.

6. Letters Patents are good in the following Caſes, that is to ſay, Where *no Warrant is made*; And where Warrant is made and delivered, and *no Day of the Delivery entered*; *And where* Day is entered, and *the Letters Patents bear Date after the Day entered.* Reſolved. Pl. C. 492. Mich. 18 & 19 Eliz. in the Caſe of Ludford v. Gretton.

7. The King may grant a *Right of Entry* and a *Real Action*; but ſuch Grant muſt be conceived in ſpecial Words, ſetting forth how the Right of Entry is. Le. 21. Trin. 26 Eliz. in the Duke of Northumberland's, alias Doughty's Caſe. 3 Le. 198. in an Anonymous Caſe.

8. The King, ſeized of a Manor in Right of his Crown, did by his Steward *grant Copyhold Lands*, Parcel of the ſaid Manor in Fee, *and afterwards made a Leaſe* of the ſame Lands under the Exchequer Seal *for twenty-one Years* &c. adjudged, that tho' no Grants of the King are available but under the Great Seal yet this Leaſe, under the Exchequer Seal, was good by the *common Uſage* of that Court, though not particularly alleged; for the Courſe of every Court is as a Law, of which the Common Law takes notice, without alleging it in Pleadings. 2 Rep. 16. Mich. 28 & 29 Eliz. C. B. Lane's Caſe.

9. 25 Eliz. 3. Enacts, That *all Letters Patents made by H. 8. ſince the 4th of the twenty-fifth Year of his Reign for the Foundation of any Dean or Chapter, or College, ſhall be adjudged Good.*

The Right of all others, (except of Priors, Abbots &c. is ſaved.)

All Grants made by the Queen to others ſince the ſaid Time, as alſo all others that ſhould be made (by Force of a Commiſſion then on Foot) before the End of this Seſſion, or within one Year after ſhall be good.

This Act ſhall not extend to Letters Patents of Offices, nor of Concealments, except ſuch Concealments only as are ſold by Commiſſioners.

Neither ſhall this Act extend to make good Letters Patents heretofore adjudged void by any Court of Record at Weſtminſter, or by Act of Parliament; neither yet thoſe of Monopolies for Toleration of any Offence prohibited by any penal Law, nor of Lands where there is an Eſtate-tail in the Queen, unleſs ſuch Eſtate be duly recited.

Here alſo the Right of others is ſaved.

10. King Edward 2. having *granted the Manor and Caſtle* of Skipton upon Craven *to Robert Clifford in Tail, H. 6. granted* to Thomas Lord Clifford (who was Heir of the Body of the ſaid Robert) *Reverſionem Caſtri & Manerii* præd. &c. *Nec non Caſtrum & Manerium prædictum.* It was held, that admitting the Grant in Tail ſhould be void, yet the Caſtle and Manor ſhould paſs to Thomas Lord Clifford in Fee in Poſſeſſion, Lane 39. S. C.

ſion, becauſe the Intent of the King was to paſs it, whether in Poſſeſſion or Reverſion. 8 Rep. 166. Mich. 7 Jac. Earl of Cumberland's Caſe.

The Words (*will and declare*) are ſufficient to amount to a Grant; and ſuch Words adjudged.

11. It was reſolved by Hubbard, Tanfield, Altham, Winch, Nichols and Haughton, that *Volumus* was a good Word of Grant, as Pigot was of Opinion, in 21 E. 4. 12 Rep. 120. Paſch. 12 Jac. in Dungannon's Caſe.

are always uſed in Patents and Franchiſes, being Things contingent, & de futuro; adjudged. 8 Rep. 73. b. in the Lord Stafford's Caſe.

12. The King's Patent may be *without Date*; for he may reſort to the Inrolment and Privy Seal, and ſo help it; but in ſuch Caſe, if he ſurmiſe a falſe Date, the ſame makes the Patent void. Arg. Godb. 416. Trin. 21 Jac. in Caſe of Lord Zouch v. Moor, cites 21 E. 4. 45. and 20 H. 7. 7. 8.

13. A Grant of a *Rent-charge out of the King's Manor, with a Clauſe of Diſtreſs*, is a void Grant; for the King cannot be ſued, nor can a Diſtreſs be taken upon Land in his Poſſeſſion. Jenk. 112. pl. 18.

Jenk. 112. pl. 18. S. P.

14. If the King grants an *Annuity, without ſaying by whoſe Hands* it ſhall be received, it is void. Jenk. 208. pl. 41.

But where the *King has an Eſtate in Fee or for Life, in any Land*, and grants it

16. A Grant of a *Wardſhip Quamdiu* in Manibus Noſtris &c. is good. So of the *Lands of Fugitives*. So of the *Profits of Lands of a Perſon outlawed in Treſpaſs*, or any perſonal Action. So of *Lands which a Felon attainted has in Right of his Wife*; for theſe *are only Chattels* in the King. Jenk. 246. pl. 35.

Quam diu in Manibus noſtris fore contingerit, it is a void Grant; for ſuch a Grant was never heard of, and it is not determinable by any Collateral Means. Jenk. 246. pl. 35.

17. A Patent of *Lands* in general, with a Reſtriction to a *Tenure*, or *Occupation*, or *Poſſeſſion*, which is *falſe*, is a void Patent; otherwiſe of a Patent of the Manor of Dale, or *any certain Thing*, a falſe Addition does not vitiate the Patent in this Caſe; for the Addition is *Surpluſage*. Jenk. 304. pl. 77.

(G. b. 4) Grant. Good *in Part*, and void in Part.

1. IF the *King has two Manors, one for Life, the other in Fee*, and the King *grants theſe two* Manors *to A. for Life*, and dies, the Grant remains good, as to the Manor in Fee. Jenk. 209. pl. 41.

2. A Patent may be *repealed* in Part, but this ſhall be only *in Clauſes independent*. Per Hale Ch. B. Raym. 177. Paſch. 21 Car. 2. B. R. in Sackvill College's Caſe, cites Fitzh. Petition 19.

3. The King *leaſed a Manor and Mines*, and withal *grants that the Vendee ſhall have the ſole vending of Allom, reſerving out of the Premiſſes* 10000 *l. a Year to himſelf, and* 1640 *l. a Year to the Lord Mulgrave*. The Queſtion was, Whether this Grant, being void for Part, (viz. for the ſole vending of Allom) ſhall be void for the Reſt? It was held, that had it been in the Caſe of a common Perſon, it might be good for Part, and void for Part, altho' the Reſervation was intire. But it was urged here, that the King is deceived, it being plain that he intended to grant the ſole Vending of Allom, which he could not do. In anſwer whereto a Difference was taken, where the King is *miſtaken in Matter of Fact*, there his Grant ſhall be void, but not where he *miſtakes the Law*; and cited 6 Rep. 55. **Lord Chandois's Caſe.** But the Court ſeemed to incline, that the Grant was void, it appearing upon the Face thereof that the King was *deceived in the very Subſtance* thereof, and the Rent being

reſerved

reſerved out of the whole. Sed Curia adviſare vult. 2 Freem. Rep. 17. pl. 15. Hill. 1676. Lord Mulgrave v. Sir J. Mounſon.

(H. b.) Office. Grant. In what Caſes a *Grant* ſhall be *good before Office.* 18 *H.* 6. *cap.* 6.

Fol 184.

See (I. c.) pl. 9.

1. IF the King leaſes Land for Years reſerving Rent to be paid at the Receipt of the Exchequer, or to the Hand of the Receiver, if the Leſſee does not pay the Rent at the Day, the * Leaſe ſhall be void, by which his Eſtate is determined. Tho it does not appear of Record that the Eſtate is determined, becauſe it may be that he has paid the Rent to the Receiver in the Country, yet the King may grant the Land over before any Office found thereof. M. 32. 33. El. B. R. between Sir *Moyle Finch* and *Throgmorton* adjudged. Contra M. 2 Ja. B.

The Caſe was to this Effect, King Philip and Queen Mary leaſed for Years, rendring Rent at the Feaſts of the Annunciation, and St. Michael, with a Proviſo, that upon Non-payment within 40 Days of either of the Feaſts, the Leaſe ſhould ceaſe, and be void. In 9 Eliz. the Rent was not paid at Michaelmas, nor within 40 Days after; but afterwards the Queen's Receiver received it, and made an Acquittance as if it had been paid at the Day, and received the Rent afterwards every Year until 30 Eliz and made Acquittances of it. 30 Eliz the Queen granted this Land in Fee to Sir T. H. and afterwards an Office found the Non-payment 9 Eliz. upon which Sir T. H. entered. And the Queſtion was, if the Leaſe was void or not without Office? And all the Barons agreed, that this Leaſe was void immediately upon the Non-payment, and that the Land is diſcharged of this Contract of the Term; and the Patentee is no longer Termor, nor (as Manwood ſaid) a Tenant at Will, nor at Sufferance, but only a Bailiff or Pernor de ſon tort, and then all the Acceptances after cannot make a void Leaſe good. And they likewiſe held, that the firſt Eſtate ended as by Limitation; and in ſuch Caſe no Office is neceſſary to intitle the Queen, and that therefore the Patentee of the Queen might enter, as into Land of which there was no Leaſe. Cro. E. 220. Hill. 33 Eliz. in Scacc. S.C ——— Note, a Writ of Error was brought in the Exchequer Chamber, and Error aſſigned in the Matter in Law; and after Argument, Mich. 36 & 37 Eliz. the Judgment was affirm'd. Ibid ——— S.C. Poph. 53. by Name of Finch v. Riſeley. ——— 2 Le. 134 to 145. S. C. by Name of Sir Moyle Finch's Caſe.

There is a Difference betwixt a Leaſe for Years, reſerving Rent payable at the Receipt of the Exchequer, with ſuch Proviſoes, and when it is payable to the Receiver or his Deputy; for in the firſt Caſe the Payment or Non-payment, appears by Record. And therefore to prove the Non-payment, there needs no Office; but in the laſt Caſe the Payment is to be made to the Receiver or his Deputy, and that appears not of Record; and therefore the Leaſe not void by the Non-payment without Office. Agreed Cro. Car. 100. Mich. 3 Car. Stephens v. Potter.

2. So if the King leaſe Land for Years, upon Condition that the Leſſee ſhall not do Waſt, and after the Leſſee does waſt, tho this Matter of Forfeiture was a Matter en Pais, yet the King may grant the Land over before any Office found of between *Hungate* and Sir *Thomas Heneage*, cited M. 32. 33. Eliz. B. R.

S. C. cited by Clerk J. 2 Le. 145 in Caſe of Sir MoyleFinch v. Throgmorton; but he adds, that ſome ſay that the Caſe was not adjudged but compounded.

3. If a Man be convicted a Papiſt, yet before the Commiſſion is returned, the King is not ſufficiently intitled to the Land or Goods to grant them. Paſch. 2 Ja. B.

4. If the King grants an Office of a Receiverſhip to J. S. and makes an Ordinance in the Letters Patents, that the Receiver ſhould enter into his Account, and finiſh it before Hillary Term annually, and to pay the laſt Money of his Debt ſtated by the Auditor before the 20th Day of March then next enſuing, upon Pain of Forfeiture and Loſs of his Office; and after the Receiver is caſt in Arrear in his Account before the Auditor, and does not pay the Money before the 20th Day, according to the Ordinance; and this Arrear appears by Record in the Exchequer. By this Nonpayment the Office is forfeited, and the King may grant it over before any Scire facias brought (or Office, as it ſeems, or other Record of the Forfeiture;) and yet if no Grant be made to another, he ought not to be removed without a Scire

See S. P. cited D. 197. b. pl. 46. as of Mich. 14 H. 8. Toly's Caſe.

facias brought by the King, because it is an Office of Record; and by Record he ought to be displaced. D. 4 El. 211. 29.

18 H. 6. cap. 6.

Br. Office devant &c. pl. 17. cites 28 H. 8. — Br. N.C. pl. 90. 27 H. 8.

5. If a Man be attainted of Treason, and his Land settled in the actual Possession of the King, either by a special Statute, or by 33 H. 8. cap. the King, notwithstanding the Statute of 18 H. 6. cap. 6. may grant them over before any Office thereof found. D. 3. 4. Ma. 145. 67.

6. *If Villein of the King purchases Goods*, the Property is in the King without Seisure; *contra of Lands*. The Goods may be wasted, and therefore it seems, that Grant of the King of Goods, as here, is good without Office. Br. Patents, pl. 83. cites 35 E. 3.

* See pl. 8. below.

7. Where the King is *intitled to Land by Ward*, he may grant it over before Office, and before Seisin, and he may seise before Office; Per Gascoign, Thirwit, and Huls, Justices. The Reason seems to be, because the King *has only a Chattle in it*; but see now the Statute * 18 H. 6. 6. that the Patent before Office is void of Land. Br. Patents, pl. 49. cites 10 H. 4. 3.

* A Man purchased Land of the King and Queen, which was Parcel of the Possessions of the Duke of Suffolk attainted of High Treasons, of which Land purchased no Office was found. And the Question was, Whether the Patent was void by reason of this Statute? And it seemed to several, that the Patent above was good by the Words (if the King's Title &c.) in as much as the Act of Attainder is found in the Chancery and Exchequer of Record. The Reporter adds, Et colligo that the Intendment of this Statute is to reform Grants and Leases to Farm made by the Chancellor, Treasurer, or other Officers of the King of Tenements of Subjects found by Office to be the Title of the King, and seised into the Hands of the King mesne between the finding of Offices and the Return of them, and not to any Grants or Gifts in Fee simple or Tail &c. D. 145. b. pl. 66. Pasch. 3 & 4 P. & M. Anon.

8. 18 *H.* 6. *cap.* 6. Enacts, that *no Letters Patent shall be made of any Lands before an Inquisition of the King's Title be found returned in the Chancery or Exchequer*; * *if the King's Title be not found of Record, nor within the Month after the Return, if it be not to them which profer their Traverse, and if any Letters Patent be made to the contrary they shall be void.*

Rhodes, Pirryam, and Anderson J. held, That this Statute did not extend to the Grant of any Land but those which come to the King by new Title, as Wardship, Mortmain, Attainder, and the like, in which Cases the Mischief was at the Common Law in this, that those who had Right could not traverse the Office, and have the Land in Farm, but were prevented by Grants made before the Office returned by which the King had disabled himself to grant the Land in Farm to him who tendered Traverse, and no Man could tender Traverse before the Office returned. Mo. 209. Pasch. 27 Eliz. Knight's Case.

S.P. Br. Patents, pl. 83.

9. Grant of the King *of the Body of a Ward*, or of *Goods*, is good without any Office thereof found; *Contra of Land* by the Statute of 18 H. 6. Br. Patents, pl. 70. cites 20 E. 4. 11.

The Question in the Exchequer Chamber was, Whether the Almoner should have this Lease or not? And it was held by Brook C. J. of C. B.

10. The King *granted to a Bishop Bona felonum de se* within a certain Precinct. The *Bishop was attainted* of Treason. A *Lessee for Years of the Bishop within this Precinct before the Indictment* or Attainder *became felo de se*; the *King* had *before this granted to B.* his Almoner *omnia bona felonum de se* after the said Treason committed, and before any Indictment; *After this* Grant to B. *the Bishop is indicted and attainted.* The King shall have this Lease; For the King's Grant to B. before the Attainder of the Bishop was void; For the King granted that which he had not. This is a *remote Possibility* in the King which cannot be granted. Jenk. 210. pl. 44. cites 1 Mar. D. 108.

Brook Ch. Baron of the Exchequer, Portman, Brown, Whiddon Justices, Baron Saxby, and Griffin Attorney General, that the Almoner shall not have the Lease, but it shall be in Order and Distribution of the Exchequer inter Possessiones Archiepiscopatus, because as the Power to grant it was not in the Queen at the time of the Grant, in as much as they were in the Archbishop &c. But Bromley Ch. J. Saunders, Stamford Justices, Baron Brown, James Dyer, and Cordel the Solicitor e contra; For the King may grant a Thing which is not in him at the time of the Grant, but which may come afterwards, As the Custody and Marriage of the Heir of his Tenant, Or the Temporalties of a Bishop cum acci-

accideriint. But of Eſcheat Cum acciderit negatur penitus per Baker, tamen quære inde. The Reporter adds Nota It had been clear if the Archbiſhop had been attainted of the Treaſon at the Time of the Grant, the Grant of the Queen had been good. D. 108. a. pl. 29. the Biſhop of Chicheſter v. Webb.

(I. b) What Things ſhall paſs by *General Words* with *Reference to other Perſon* or * Thing.

See (K. b)—(Z. b)—(A. c) to (E. c)—(R c)—* (L. b)

1. **If the** King purchaſes a Manor to which Franchiſes Real are regardant, and after gives the Manor Simul cum Libertat. ad illud ſpectant. **and does** not ſay, Simul cum Libertat. ad illud ſpectant. at the time that the Manor was in the Hands of the Feoffor of the King, **the Franchiſes do not paſs by this General Grant, becauſe the Franchiſes of common Right were annexed to the Crown.** † 43 Aſſ. 10. **per Thorpe.** 43 E. 3. 20. b.

† Br. Extinguiſhment pl. 32. S. C.

2. But **otherwiſe it had been if** ſpecial Mention **had been made as** * **is aforeſaid in the Charter.** ‡ 43 Aſſ. 10. 43 E. 3. 20. b.

* Fol. 185.

‡ Br. Extinguiſhment, pl. 32. cites S. C. For they were extinct before, as it ſeems, and by theſe Words they paſs as Appendants; per Thorpe.——Br. Incident, pl. 12. cites S. C.

3. **If A. be ſeiſed of a Manor, to which the Franchiſes of** Waiſe and Stray, or ſuch like, are appendant, **and the** King purchaſes the Manor with the Appurtenances, **Now the Franchiſes are re-united to the Crown, and not appendant to the Manor**; **yet if** he grant the Manor in ſo large and ample Manner as A. had it, **the Franchiſes will paſs as appurtenant to the Manor. Co. Litt. 121. b.**

There is a Difference between what was *originally a Flower of the Crown*, and other Things the Crown; the King. 2

which are not, as *Catalla felonum* &c. If ſuch come again to the King they are merg'd in but it is otherwiſe in Caſe of a *Leet*, *Park*, *Warren*, *Toll* &c. which were firſt created by Mod. 144. Hill. 28 & 29 Car. 2. C. B. in Caſe of James v. Johnſon.

4. **If J. S. has certain** Liberties appertaining to a Manor, **and after the Liberties** are reſumed, **and afterwards the** King grants the Manor to J. D. with general Words, **that he ſhall have** tot, talia, tanta & eaſdem Libertates &c. as J. S. had **&c. This ſhall not paſs the Liberties which J. S. had before the Reſumption. P. 11 Car. B. R. ſaid by Juſtice Jones to be ſo adjudged.**

5. If the King grants *all Lands, Tenements, and Advowſons of Churches which were the Prior of N's*, this is a good Grant. Br. Patents, pl. 87. cites 32 H. 6. 20, 21. per Cur.

So of all the Lands and Tenements which were J. S's. Ibid.

—— *So* if he be poſſeſſed of a Ward, and grants all Lands and Tenements, Advowſons and Knights Fees *which were J. N's, Father of the Ward.* Ibid.——*So* of all Lands and Tenements &c. *which were J. P's. attainted of Felony.* Ibid

6. The King, *for* a great Sum of *Money*, *Bargains and Sells* to A. *the Manor* of Stepney, *and* the *Marſh of Stepney in Fee*, and the King moreover grants, that the ſaid Patentee ſhall have the ſaid Manor and Marſh *as amply as it came into the King's Hands by the Grant and Surrender of the Biſhop of London*, and in Truth *the King had* not the Marſh *by ſuch Grant and Surrender, but only the Manor, and had the Marſh from others.* Reſolved by all the Judges of England, that the Manor and Marſh paſs well by this Patent. The ſaid *Reference* in the ſaid Patent *to the* Biſhop of London's *Surrender is in the King's Covenant, and not in the Body of the Grant*; And therefore it does not vitiate the Patent, the firſt Certainty in the King's Patent is ſufficient, where the King is not deceived in his Grant. Jenk. 261. pl. 60. cites Trin. 31 Eliz. Hare's Caſe.

7. If

7. If the King *grants* over certain *Lands which had come to his Hands before, and* grants *further* to the Grantee *tales Libertates* Privilegia Juriſdictiones &c. *as he, who was laſt ſeiſed of the Lands had*, whereas the *King did not know the Certainty of the Liberties* and Privileges, yet the Grant is good enough, and the Patentee may inquire what Liberties and Privileges the other had before; and in as much as this Uncertainty may be *reduced to a Certainty by Inquiry* or other Circumſtance the Grant is good. 10 Rep. 65. a. Hill. 10 Jac. in Whiſtlers Caſe.—Cites Pl. C. 12. b. in Fogaſſa's Caſe.

See (I. b)—(L. b)—(Z. b)—(A. c) to (E. c) and (R. c)

(K. b) Grants of the King. [*Words of Reference.*]

If an Abbot was ſeiſed of a Manor which had Waifs and Eſtrayes appendant to it, & Catalla felonum & Utlagatorum and the Manor comes to the King's Hands, and he grants over with a tot, talia &c. there they paſs, and the ſecond Grantee ſhall have Waifs and Eſtrays as appendant to the Manor, but not Catalla Felonum & Utlagatorum, unleſs he has ſpecial Grant of them by Deed. Jo. 349. in Itin. de Waltham.

1. **If the** Abbot of D. had Deodands **by Grant of the King in a certain Vill, and after** the Abby comes to the King **with the Poſſeſſions by the Statute of Diſſolutions, and** the King grants the Land and Vill & Bona & Catalla Felonum **by expreſs Words**, and after makes a Grant **with general Words** of tot, talia, eadem & hujuſmodi Franchesia, Libertates &c. which the Abbot **had in the ſaid Land and Vill. The Patentee ſhall have, by thoſe general Words, Deodands which ſhall happen there, in as much as it has Reference to the Liberties which the Abbot had. P. 11 Car. B. R. between the** *King and the Inhabitants of St. Edmond's Bury in Suffolk.* **Adjudged in a Quo Warranto and Plea made thereto.**

Bend. 252. pl. 270. S. C. with the Pleadings, adjudged. —— S. C. cited 10 Rep 65. b. Hill. 10 Jac. in Whiſtler's Caſe. —— 2 Mod. 1. Hill. 26 H 27 Car. 2. the King v. the Biſhop of Rocheſter

2. **If the** Rectory impropriate of W. to which an Advowſon of a Vicarage is appendant, comes to the King **by Eſcheat** by Attainder of J. S. **and the** King ex certa Scientia & mero motu **grants to B. in Fee all the Poſſeſſions of the Glebe and Tithes of the Rectory by ſpecial and particular Names, and generally** Omnia Hereditamenta ſua quæcunque parcel. ſpect. vel pertin. dictæ Rectoriæ de W. (**But no expreſs Mention is made of the Rectory, or of the Advowſon &c.**) adeo plene & in tam amplis Modo & Forma Qualitate & Conditione prout dictus J. S. ea habuit & prout ad manus ipſius Regis devenerunt ſeu devenire debuerunt. **In this Caſe, by this Grant and the ſaid General Words, the Advowſon of the Vicarage ſhall paſs, and by the ſaid Words Adeo plene &c. Prout &c. & Ex gratia ſpeciali, certa Scientia &c. The Parſonage ſhall paſs alſo. D. 18. El. 350, 351. 21, 22. Adjudged; For the Queen by Ignorance is not deceived.**

3. If the King has a *Manor by Eſcheat or* by *Purchaſe*, and grants the Manor *as entirely as J. N. held it, or as it came to his Hands by Eſcheat*, an Advowſon Appendant paſſes without the other Words; for it ſhall be intended, that the King is appriz'd of his Right; per Thorp quod Curia Conceſſit. Br. Patents. Pl. 6. cites 43 E. 3. 22.

(L. b.) What Things ſhall paſs by general Words with Reference to *other Thing*.

See (I.b.) (K.b.) (Z.b.) (A.c.) to (E. c.) & (R.c.)

1. **WHEN the Charter of the King** in general Terms refers to a Certainty, **this contains as expreſs Mention as [if] the Certainty had been expreſſed in the Charter, tho' the Certainty to which the Reference is be** not of Record, but lies in Averment by Matter en Pais or in Fact. **Co.** 10. *Whiſtler*. 64. **Reſolved.**

The Caſe was this, viz. Queen Elizabeth being *ſeized of a Manor*, to which an *Advowſon* was *appendant* in her Demeſne, as of Fee in Right of her Crown, *granted the* ſaid *Manor*, with the Appurtenances, *for* 21 *Years, excepting the Advowſon*; and afterwards reciting the ſaid Demiſe and Exception, ſhe *made another Grant to the ſame Grantee for another Term* of Years, *with the like Exception*. King James, in Conſideration of Service, ex certa Scientia &c. *granted the Manor* cum ſuis Juribus &c to G. H *exceptis quæ in eiſdem literis patentibus excipiuntur*, and mentions the Leaſe in Reverſion, and the like Exception therein; but then follows this Clauſe, *& ulterius de uberiori gratia* noſtra & ex certa Scientia &c. Damus *omnia et ſingula Tenementa prædicto Manerio quoquo modo ſpectant. &c.* Et ulterius Damus &c. to the ſaid G. H. and his Heirs the ſaid Manor Ac cætera omnia & ſingula Præmiſſa cum eorum Pertinentiis *adeo plene* &c. *as the ſame came to him, and now are in his Hands.* And it was reſolv'd as here. And, 2dly, it was reſolv'd, That if thoſe Words (adeo plene et integre) had been omitted, then it would not have paſſed by the firſt Clauſe, but by the Addition of the laſt Clauſe, all the Parts of the Patent taking Effect at one and the ſame Time, the Advowſon ſhall paſs appendant. And, 3dly, tho' the firſt Clauſe of the Grant refers to the Demiſe in which the Advowſon is excepted yet by the middle Clauſe all Tenements &c. pertaining to the ſaid Manor are granted; and the laſt Clauſe grants the Manor with the Appurtenances &c. adeo plene. 4thly, it was reſolv'd, without any Difficulty, that the Exception ſhall be extended only to the Leaſes recited, and not to be any Exception out of the Letters Patents of the Fee Simple. And Judgment was given, that the Advowſon paſs'd. 10 Rep. 63. Hill. 10 Jac. *Whiſtler*'s Caſe.— S.C. cited 2 Mod. 1. Hill. 26 & 27 Car. 2. C. B. in Caſe of the King v. the Biſhop of Rocheſter. — S C. cited 2 Mod. 107. Trin. 28 Car. 2. in Scacc. in Caſe of the Attorney-General v. Sir Edward Turner. — S. C. cited Hob. 170. Hill. 12 Jac. Stukely v. Butler.

2. **The** Prior of Chriſtchurch, **in the County of Southampton, was** ſeized of the Manor **of Chriſtchurch**, and of a free Fiſhing in Groſs in the River of Avon in Chriſtchurch; and all this came **by the Diſſolution of Monaſteries in** 31 H. 8. to the King; **and the** King grants the Manor **of Chriſtchurch**, and the Scite of the ſaid Priory, and all Lands, Tenements, and Hereditaments in Chriſtchurch **aforeſaid**, at any Time appertaining to the ſaid Priory; and all Libertes, Privileges, free Warrens, free Fiſhings, &c. * belonging to the ſaid Manor. **The ſaid Fiſhery which the Prior had in Groſs ſhall paſs by this Grant; for it will paſs by the general Words of (All Lands, Tenements, and Hereditaments at any Time belonging to the ſaid Priory) this being an Hereditament belonging to the Priory; and the laſt Words, in which the free Fiſhery is expreſsly granted with a** Reſtriction (appurtenant to the ſaid Manor) **will not reſtrain the firſt general Words, but the Piſchary in groſs ſhall paſs by it; for the laſt Words were only in Majorem Cautelam. Mich.** 11 **Car. B. R. between Lord** *Arundel*, **of** *Warder*, **and Alderman** *Venn*, **per Curiam. Reſolved and Ruled accordingly upon Evidence at the Barr.**

* Fol. 186.

3. King Ed. 6 was ſeized in Fee of the Manor of C. of which a Wood, containing 300 Acres, was parcel; **he** granted the ſaid Wood in Fee, **and after the ſaid** Wood reverted to him as Eſcheat **for Treaſon, afterwards** Queen Mary granted the ſaid Wood in Fee, **the** Grantee regranted it to Queen Elizabeth; **and afterwards** Queen Elizabeth granted the Manor & omnes Boſcos modo vel antehac cognit. vel reputat. ut pars membrum vel parcell' ejuſdem Manerii **to the Earl of Leiceſter in Fee. In this Caſe, by thoſe Words the Woods ſhall paſs; For the Word** Antehac **in caſe of the King may well have Retroſpect to the Time of E. 6. but not ultra if the Word** Unquam **be not adjoin'd to it. But in caſe of a Subject, the Word (Antehac) without the Word Unqnam precedent ſhall be conſtru'd** quocunque tempore præterito. **D.** 20. **El.** 362. **And ſame Caſe reported with the Pleading. Co.**

S. C cited 6 Rep 66. b. Mich 4 Jac. C. B. in Sir Moyle Finch's Caſe.

Ent. 381. adjudged. Et Ibidem 383, 384. the Reaſons ſhewn of the Judgment.

4. If the King grants the Manor of D. with the Appurtenances, and all other Lands, Paſtures, Woods, et Hereditamenta, Antehac cognita, ulitata, accepta vel Reputata ut Membrum vel parcella Maneriі prædicti, A Wood which is not parcel of the Manor truly, and in Right, ſcilicet, in facto et Jure, ſhall not paſs, though it be averred, that the ſaid Wood adtunc antea fuit reputat. & parcel' Maneriі predicti; without ſaying, that it had been reputed Parcel Time out of Mind. For Matter of Inheritance cannot take any good Foundation without coupling and annexing Time of Preſcription. Mich. 21, 22 El. in Scacc. Rot. 302. Adjudged, quod vide in the new Entries 380, where the Reaſons of the Judgment are entred upon Record; this was upon a Demurrer between the *King* and *Imber* and *Wilkin* Defendants.

5. And in the ſaid Caſe if it had been averr'd, that the Wood was reputed Parcel of the Manor Time out of Mind &c. tho' in Caſe of a common Perſon Proofs of ſuch Iſſue might be by vulgar and diffuſed Reputation of People of the ſame Vill, or * of our or of other Manor and Manors, or Vills adjoining &c. or of the Body of the County &c. yet in Caſe of the King in ſuch Iſſues [as to] the Word (Reput.) the Evidence or Proof ſhall not be by ſuch vulgar and diffuſed Reputation of the People; but the Proofs ought to be by ſome Matter of Record or Writing, as by the expreſs Valuation of it between the Prince and the Subject, in the Particulars of the Purchaſe, or in the Surveys and Books of Accounts of the Auditors and Receivers, Bailiffs, and ſuch Officers and Miniſters always entred and anſwered in the Rolls and Books as Parcel of the Manor; otherwiſe, it is not any Proof of the Reputation in caſe of the King. In the ſaid Caſe of 21 and 22 El. between the *Queen*, Plaintiff, and *Imber* and *Wilkin*, Defendants. Reſolved per Curiam, as it is entred upon the Record in the ſaid New Entries. 380.

* Orig. [Noſtram.]

See (Z. b.) pl. 3. S. C.

6. If there were two Rectories and two Rectors in one Church, and ſo two ſeveral Advowſons, and afterwards they are ſeverally appropriated to one Religious Hoſpital as ſeveral Rectories, and at ſeveral Times, and the Rectories of them appropriated 33 E. 3. but always after enjoy'd by the Hoſpital as one Rectory appropriate; and ſo reputed to be one Rectory * 'till the Diſſolution of the Hoſpital, which came to H. 8. by the Statute of 31 H. 8. and afterwards it is granted by Queen Elizabeth by the Name de tota illa Rectoria noſtra &c. where in truth they were at the Commencement ſeveral Rectories, yet it ſhall be a good Grant, by reaſon of the Reputation that it was one Rectory ſo long Time. Mich. 15 Car. B. R. between *Goadbie* and *Barloe*, per Curiam. Reſolved upon Evidence upon a Trial at the Bar, which concerned Mr. *Staughton*, the Patentee, for the Rectory of Moreton, which was Parcel of the Poſſeſſions of the Hoſpital of St. John's in Warwick.

* Fol. 187.

7. King John granted to the Corporation of Waterford *Cuſtumam vocatam* the *Murage de Omnibus rebus Venalibus* infra dictam Civitatem emptis ſeu Venditis *adeo Plene et integre ſicut Burgenſes Villa de Briſtol habebant* &c. And it was reſolv'd, that by thoſe Words no Cuſtom or Subſidy is granted to them, for this Reaſon, (among others) That the Reference to the Vill of Briſtol is uncertain and void, becauſe there is no ſuch Vill or Borough called Briſtol in this Kingdom of Ireland; and the Vill of Briſtol intended in the Charter being in England, the Averment that the Burgeſſes of Briſtol had Murage at the Time of this Grant cannot be try'd here. Dav. Rep. 13. a. b. Mich. 5 Jac. B. R. in the Caſe of Cuſtoms.

(M. b.) Grant of the King. *Prerogatives.* [*or other Things.*] What Things he may grant over. See (M. b. 2.)

1. 8 E. 4. Rot. Clauſo Memb. 6. Dorſo. Verdun habebat omnes Libertates ad Coronam & Regiam Dignitatem pertinentes excepta tamen Crocea, and thoſe by Grant of the King &c.

2. 12 E. 1 Rot. Chartar. Memb. 3. Pro Civibus London, Vicecomitatus de London & Middleſex granted to them by H. 3. and other Liberties, quod faciat Vicecomites &c.

3. The King may appoint another to aſſent to the Election of an Abbot or a Biſhop. 1 E. 1. Rot. Pat. Memb. 15, 16. 6 E. 1. Memb. 14. F. 10. 7 E. 1. Memb. 7.

4. 10 E. 1. Rot. Pat. Memb. 2. Power given to one to aſſent to the Election of a future Abbot &c.

5. 10 E. 1. Rot. Pat. Memb. 4. Poteſtas conceſſa Edmundo Com. Cornub. admittend. Nomine & Vice Regis majorem Oxon, cum ipſum ex parte Communitatum Villæ predictæ ſibi preſentari contigerit. Conſimil. ibidem, Pro Majore & Vicecomitibus London.

6. Vide Grant to the Cuſtos Regni of divers Things. 1 E. 2. Rot. Pat. Part 2. Memb. 28.

7. The King cannot grant the next Lapſe of the Church of D. which ſhall happen, before it happens. Hob. R. 208. The King cannot give a Corody in a Religious Houſe, or preſent one to the Church of his Patronage in Reverſion, as is agreed in 39 H. 6. 48. For in thoſe and other like Caſes, the King has only a Preſentment or Commendation of a Perſon, when the Corody or Church is void. 8 Rep. 55. b. Mich. 6 Jac. in the Earl of Rutland's Caſe.

8. If a Lapſe happens to the King, he cannot grant it over; for it is a Truſt in himſelf. Hob. R. 208.

9. The King cannot grant to another Officium Pincernæ, called the Butler of London, and the Butlerage and Priſage of Wine Habend. for 24 Years; for it is not grantable over, it being but Purveyance for Wine for the King's Houſe. H. 40. 41. El. B. R. Sir *Thomas Vaviſor*'s Caſe. Dub. 5. Quere.

10. The King cannot grant over to another the ſole Making of Gunpowder for to dig in the Soil of other Men; for it is Purveyance to dig in another's Soil, [and] is a Prerogative not grantable over. H. 10 Ja. B. Sir *Robert Johnſon*'s Caſe; per Curiam. S. P. Reſolved 12 Rep. 13. in the Caſe of Saltpetre.

11. Trin. 2 E. 3. B. R. Rot. The King granted to the Abbot of Reading, inter alia, Nec faciat Milites niſi in Sacra veſte Chriſti 106. in qua parvulos ſuſcipere modeſte caveat, maturos autem ſeu diſcretos tam Clericos quam Laicos provide ſuſcipiat &c.

12. Rot. Parl. 25 E. 3. 2. Part N. 11. All the Profits of Fines, Amercements of the Labourers, Sellers of Victuals againſt the Statute, granted to the Commons for Eaſe of the Poor, in Payment of Tenths during this Payment. Prynne's Cott. Rec. Abr. N°. 11. is, That the King, in Conſideration of the great Dearth of Corn, releaſeth the Half of his Proviſion appointed to be taken by the Purveyors. But N°. 18. is, that the Fines of Labourers may be paid to the chief Taxes of this Fifteenth, in Aid of the Poor.

13. If A. leaſes Land, reſerving Rent, and after is outlawed, and an Inquiſition thereof found, and a Seiſure of it made, and the King grants over the * Benefit of the Outlawry quam diu in Manibus ſuis it ſhall continue, the Patentee ſhall have the Rent reſerved upon the Leaſe, which ſhall become due during the Outlawry, ſo long as it continues in the Hands of the King. Mich. 10 Car. B. R. between *Culpepper* and *Coveney*. Per Curiam. Reſolved upon a Special Verdict. Intratur Tr. 7 Car. Rot. 835. * Fol. 188.

14. The

Br. Prerogative, pl. 104. cites S. C. ——

14. The King cannot grant to another the *Year, Day, and Waſt* given him by the Law; for he cannot transfer his Mercy. Jenk. 307. pl. 83. cites 3 E. 3. Fitzh. Corone 310.

S. P. By all the Judges. Jenk. 79. pl. 55. cites 1 H. 5. Fitzh. Executors 108. ——S. P. Jenk. 304 pl. 77. cites 3 E. E 3. Corone Fitzh. 310 Stamf. 50.

Br. Prerogative, pl. 143. cites S. C — Br. Diſmes, pl. 10. cites S. C. ——

15. The King ſhall have all *Tithes* which are in Places that are *out of any Pariſh*, as in Inglewood Foreſt &c. and may grant them over by his Letters Patents. Br Patents, pl. 33. cites 22 Aſſ. 75.

Br. Prerogative, pl. 47. cites S. C. —Br. Scire facias, pl. 154. cites S. C.

Br. Patents, pl 41. cites S C.

16. Note, that the King by Charter by expreſs Words, may grant *to a Commonalty or Corporation, to make another* Commonalty or *Corporation.* Br. Prerogative, pl. 53. cites 49 Aſſ. 8.

As if he has an *Annuity* out of the

17. The King may grant over *a Choſe in Action.* Br. Choſe in Action, pl. 1. cites 3 H. 4. 8.

Priory of D. he may grant the Annuity over, and the Grantee ſhall have Writ of Annuity. Ibid.—Br. Prerogative, pl. 11. cites S. C. ——*So* where a Man has *raviſh'd the King's Ward*, he may grant over his Action thereof. Br. Patents, pl. 55. cites 5 E. 4. 8. ——He may grant over his Action and his Choſe in Action. Br. Choſe in Action, pl. 6 cites 2 H. 7. 8. ——The King may *grant Action* after that he has Cauſe of Action; as of Debt, *and Things certain, but not* of *Treſpaſs* and Things *uncertain.* D. 1. b. pl. 7. —S. P. Br. Choſe in Action, pl. 11. cites 5 E. 4. 8. ——Br. Patents, pl. 55. cites S. C.

It was ſaid for Law, that the King may grant a *Choſe in Action*, which is *Perſonal*, As Debt and Damages &c *or a Choſe Mixt*, As the Ward of the Body, *but not a Choſe Real*, As Action of Land &c. as Rights, Entries, Actions &c. which Abbots may have, and that the King ſhall have thoſe by the Statute of Diſſolution of Abbeys 31 *H.* 8. Thoſe Choſes in Action the King cannot grant. But ſee if there are not *Words in this Statute to put the King in Poſſeſſion, tho' the Abbot was put to his Action.* Br. Patents, pl 98. cites 32 H. 8.

The King may grant a Choſe in Action, but *not without Special Words.* 3 Lev. 135. Mich. 35 Car. 2. C. B. Travel v. Cartaret ——S. P. 12 Rep. 2 Ford v. Sheldon.

Br. Contempts, pl. 4. cites S. C.

18. If the King grants to a Man to have a *Ferry*, and to take of every one a Halfpenny &c. this is good; for it is Quid pro quo. Br. Patents, pl. 12. cites 13 H. 4. 14.

So of *Pontage of every one paſſing a Halfpenny*, to make the

19. *And* the King by his Patent may grant to a Man *to take a Halfpenny of every Man for incloſing of his Vill, to have Paſſage there.* Ibid. per Gaſcoign.

Bridge; for they have *quid pro quo.* Ibid. ——*So* of *Toll* for the ſame Cauſe. Ibid.——Br. Contempts, pl. 4. cites S. C.——*But* the King by his Letters Patents cannot grant *Murage* &c. to take ſuch Sum &c. becauſe it is in *Charge of his People*, which *cannot be without Parliament.* Ibid.

The King may grant *Toll to be taken in Fair or Market*, but *not* to take *for Paſſage in the Highway*, viz. *Thorough-toll*; for this cannot be taken but by *Preſcription.* Br. Prerogative, pl. 112. cites 50 E. 3.—— He may grant *Toll*, *Fair*, *Market* &c. *but not to have Aſſiſe of Freſh Force, nor Toll Traverſe*, nor *Toll-Thorough*; for thoſe are by Cuſtom, which *cannot commence* at this Day *by Grant*; for the King cannot make a Law by his Grant. Br. Patents, pl. 100. cites 37 H. 8.

It is agreed, that the King cannot grant *Toll to be taken in the Highway*, which is free; but *Pontage and Murage* may be granted, becauſe there is *quid pro quo*; but then the Payment thereof ſhall be no longer made than the Bridge continues for the Uſe, or the Wall continues for the Defence of the Subject Noy 176. Darcy v. Allen.

Br. Prerogative, pl. 18, cites S. C.—

20. The King cannot grant *his Prerogative.* Br. Patents, pl. 13. cites 14 H. 4. 9.

Ibid. pl. 60. cites 2 H. 7. 13. S. P. Per Kebill.——Tho' the King grants *Jura Regalia*, yet it ſhan't exclude the King himſelf. Per Heath J. Mar. 165. Hill. 17 Car. Anon.

Holt Ch. J. ſaid, He did not know any Reaſon for a *Difference* between the *ancient Lands of the Inheritance of the Crown, and other Eſtates* which the King has, which are of *an higher Nature*, and called the *Flowers of the Crown*, as Waifs, Strays, &c. as in 9 Rep. The Abbot of Strata Marcella's Caſe; alſo *Hundreds* might be alien'd in Fee, till for ſeveral Inconveniencies it was reſtrained by the Statute of E. 3. and the King might erect a *County Palatine*, and ſeparate it from the immediate Government of the King, with a Power to pardon Treaſons, Felonies &c. till the Statute of 27 H. 8. cap. 24. which reunites the Liberties and Privileges to the Crown. Skin. 604. Mich. 7 W. 3. in Cam. Scacc. in the Banker's Caſe.

21. The

21. The King cannot *diſpoſe of his Crown by Teſtament*, tho' it be *under the Great Seal*; Nor of the * *Ports* of the Kingdom; *Nor* of the *Jewels of the Crown*; Nor of *Power to pardon* † *Treaſon or Felony* within this Kingdom; *Nor* of Power *to make* ‡ *Judges, Juſtices* of the Peace, *or Sheriffs*; Nor of ſuch which concern Government in a high Degree; Of theſe the King can neither make a Grant nor a Teſtament. He may grant the || *Lands* which he has *in Jure Coronæ, by* his Letters *Patents, or* by his *Will under the Great Seal.* By all the Judges. Jenk. 79. pl. 55. cites 1 H. 5. Fitzh. Executors 108.

* The King granted to the Abbot of Whitney the *Cuſtody of a Port* which is as it were a Key of the Kingdom, and therefore the Grant was void, and ſo adjudged; Cloath workers of Ipſwich. —— Roll R. 5. in S. C. S. P. — Jenk. 304. pl. 77. ——

† A Grant to pardon Treaſons is void; But *in Scotland and Ireland*, ſuch Grant to be executed in the Name of the King is good. And ſo to make Knights there. The *Diſtance of Place and ſudden Occaſions*, and the King's Abſence make the Difference. By all the Judges of England. Jenk. 171. pl 36. cites 1 H. 7. 16.

‡ The King cannot *grant to a Man to make an Officer of Record to ſerve the King's Court, nor to make a Juſtice*; Quære; For Cities and Burghes have ſuch Liberty. Br. Patents, pl. 45. cites 2 H. 7. 6.

The King cannot grant a Power to any to make Juſtices of Oyer and Terminer; but he ought to conſtitute ſuch Juſtices himſelf; for it is a High Prerogative. Jenk. 171. pl. 36. cites 1 H. 7. 16.

Grant of the King made *to the Abbot of St. Alban's to make Juſtices*, is not good; for is a *Thing annexed to the Crown*, and cannot be ſever'd, as Grant *to make Denizens, or to pardon Felons* is not good, *contrary of Steward in Leet, or Juſtice* where Conuſance of Plea is; for thoſe are the Stewards or Juſtices of the King; but the Grant above to the Abbot, to make Juſticiarios ſuos [is not good] and ſuch cannot *allow Clergy to a Felon*, nor the Ordinary is not bound to obey him. Br. Patents. pl. 111. cites 20 H. 7. 6. 8. Fineux Juſtice.

The King has Power to alien or charge the Eſtate, which he has in Jure Coronæ. Per Holt Ch J. Mich. 7. W. 3. Skin. 602. 603. in the Banker's Caſe.

22. If the King grants to me a *Fair and Toll* in B. this is a good Grant; per Hunt. Br. Patents. pl. 16. cites 19 H. 6. 62.

23. Præcipe in Capite, the King cannot grant *to deviſe Land Teſtament*; Nor *that the youngeſt Son ſhall inherit*; nor *that Land ſhall be Antient Demeſne*, or the like, and yet Preſcription and Cuſtom lies of them. Br. Patents. pl. 25. cites 37. H. 6. 27.

The King cannot grant that Lands ſhall be Deviſable, Borough-Engliſh, Gavelkind, nor the like; for thoſe are by Cuſtom, which cannot commence at this Day by Grant; for the King cannot make a Law by his Grant. B. Patents. pl. 100. cites 37. H. 8. ——— S. P Br. Prerogative pl. 53. cites 49 Aſſ. 8. ——— Br. Patents. pl. 41. cites S. C.

24. The King might aſſign Part of the *Tenths granted to him by the Clergy* to certain of his Creditors, and by this the Clergy became Debtors to them, and the Collectors charged, and the King ouſted of it. Br. Grants. pl 111. cites 1 H. 7. 8.

Br. Choſe in Action pl. 7. cites S. C — Br. Charters de Pardon. pl. 37. cites 7. cites S. C.

S. C. — Br. Quinzime. pl.

25. The King may grant over his *Rent, and* his *Condition to re-enter* for Non-payment. Br. Choſe in Action. pl. 6. cites 2. H. 7, 8.

S P. per Huſſey Ch. J. Br. Patents. pl. 46. cites 2 H. 7. 7 —— S. P. Per Weſton. J. Pl. C. 243. in the Caſe of Wyllion, v. Lord Barkley.

26. The King *may be Founder, and have no Corody*, as where the King *grants at the Commencement, that neither he nor his Heirs ſhall have the Corody*, and he may releaſe it after; for the Name of Founder remains. Br. Patents. Pl. 57. cites 8 H. 7. 12.

And ſo he may releaſe *all the Tenure to his Tenant, except Fealty*; for there Tenure remains. Ibid. — *But* he *cannot* releaſe *all the Tenure*; for all Land ſhall be held Mediately, or Immediately. Ibid.

27. The Queen has Right to certain Land by the *Attainder of* J. S. who was a *Diſſeiſee*. In this Caſe, if ſuch a *naked Right* may be granted at all, it ought to be granted with ſpecial Recital by expreſs and ſpecial Words, per Cur. 3 Rep. 4. b. Trin. 35. Eliz. in the Marquis of Wincheſter's Caſe.—cites 8 Eliz. Cormer's Caſe, alias Cromer's Caſe.

28. A. obtained a *Licence* from the King *to go beyond Sea* for a certain Time, *and after* the Time expired A. *is commanded* under the Privy Seal, upon his Allegiance, *to return* to England, *and does not* obey. It was reſolved by all the Judges of England, that if A. in this Caſe has a Manor where there are Copyholds, the King may grant the Copyholds. Jenk. 246. pl. 35. cites 23 Eliz. D. 275. 177.

29. King H. 6. granted to the Corporation of Dyers within London, Power to ſearch &c. and if they found any *Cloth dyed with Logwood*, that the Cloth *ſhould be forfeit*; And it was adjudged, that this Charter concerning the Forfeiture was againſt the Law of the Land, and 9 H. 3. 29. For *no Forfeiture can grow by Letters Patents.* 2 Inſt. 47.

30. It was reſolved, That the King may grant *wild Swans unmark'd, and their Cignets*, as in Rot. Par. An. 30 E. 3. Part. 2. Num. 20. the King granted to C. W. all wild Cignets unmark'd between Oxford and London for ſeven Years. And in eodem Rot. An. 16. R. 2. Part. 1. Num. 39. ſuch a Grant of wild Cignets in the County of Cambridge to B. Bereford Knight. And in eodem Rot. An. 1 H. 4. Part. 6. Num. 14. a Grant was made to John Fenn, to ſurvey and keep all wild Cignets unmark'd, *Ita quod de proficuo reſpondeat ad Scaccarium*, by which it appears, that the King may grant wild Swans unmark'd. 7 Rep. 18. a. Trin. 34. Eliz. in the Caſe of Swans.

31. If *Penalties* are *given by* Acts of *Parliament for Relief of the Poor*, the King cannot diſpoſe of them otherwiſe. Jenk. 307. pl. 83. cites Hill. 2 Jac. 7 Co. 36. b.

32. King cannot grant *Reverſionem Officii*; For he has no Reverſion, but Inheritance grantable in Reverſion. 8 Rep. 57. a. Mich. 6 Jac. in the Earl of Rutland's Caſe.

33. The King may grant a *Rent out of a Fair*, or a *Thing not manurable*, as out of a Bailiwick, Tithes &c. Jenk. 14. pl. 24.

34. The King by his Grant cannot *exclude himſelf from proſecuting any Plea of the Crown*; for it concerns the publick Government, and cannot be ſeparated from his Perſon. Jenk. 190. pl. 93.

35. King Ch. 2. being indebted to divers Perſons in 41,6000 l. 8 s. 2 d, for the Payment of the Intereſt of that Sum, grants for him, his Heirs and Succeſſors 25,000 *l. per Ann. to be paid out of his Revenue of the Hereditary Exciſe.* And tho' it was objected, That this Revenue was given by Act of Parliament and that it ariſes out of the Purſe of the People, And that they are not alienable, becauſe they come in the Place of an Inheritance, which the King could not have aliened as Tenures in Capite, Purveyance &c. yet adjudged that the Grant was good. Skin. 601. &c. Mich. 7 W. 3. in Cam. Scacc. The Banker's Caſe.

S. C. Freem. Rep. 331. in the Exchequer, Hill. 1691. And it was agreed by Atkins, Turton, and Powel, but Letchmere contra, That the Grant was good to charge the Succeſſor. It was admitted, That the King may grant an *Annuity*, or charge his Revenue, and cited many Books to that Purpoſe; but it *muſt be ſaid of whoſe Hands to be received*, or elſe it is not good; for *he cannot charge his Perſon*; and that it is good, notwithſtanding it is out of an Incorporeal Inheritance. And though it was objected that this is but an Authority, and ſo void by the King's Death, becauſe revocable; yet they held it an Intereſt; and a Licenſe coupled with an Intereſt is irrevocable. Upon the Petition of Hornbee, Williamſon, Smith, and Stone.

36. Whether the King may grant the *Inheritance of a Viſitation* may be a Queſtion; for it may be ſaid to be privy to his Perſon; but without doubt he may grant, to whom he pleaſes, to be Viſitor *for a Time.* Per Holt Ch. J. 12. Mod. 233. Mich. 10 W. 3. Anon.

37. An Appeal lies to the King in Council from a Decree made in the Iſle of Man by the Lord Derby, tho' the Grant was *made of the Iſle of Man without any Reſervation of the Subject's Right of Appeal* to the Crown; Per Ld Ch. J. Parker; For that otherwiſe there would be a Failure of Juſtice; And the Lords of the Council proceeded in the Appeal, and determined in favour of the Appellant, and the Lord Derby ſubmitted and conſented to the Examination. Wms. Rep. 329. Mich. 1716. Criſtian v. Coreen.

(M. b. 2) Grants of the King. What Things he may grant. *Diſpenſations, or Forfeitures* on Penal Statutes.

See (M. b)

1. THE King cannot *grant* to any one a *Power to diſpenſe with any Penal Statute.* Juſtice and Mercy are inſeparably annexed to the Crown and cannot be transferred; By all the Judges of England. Jenk. 307 pl. 83. cites Hill. 2 Jac. 7 Co. 36. b. &c. the Caſe of Diſpenſations. S. P. Hob. 183. Hill. 14 Jac. in Caſe of Daviſon v. Barber. ——

S. P. Hob. 155. Mich. 10 Jac. in Caſe of Colt and Glover v. the Biſhop of Coventry.——The King cannot grant to any Subject Power to diſpenſe with as many Offenders as he pleaſes; By all the Judges of England. Mo. 764. Mich 3 Jac. Richards's Caſe.

2. Queen Eliz. under the Great Seal, granted the Penalty and Benefit of a Penal Statute, with Power to diſpenſe with the ſaid Statute, and to make Warrant to the Ld. Chancellor, or Keeper, to make as many Diſpenſations and to whom he pleaſe. Upon a Reference of this Grant, it was reſolved by all the Juſtices of England, that the ſaid Grant was utterly againſt Law; And alſo, That when a Statute is made by Parliament *Pro Bono Publico*, the King cannot give the Penalty, Benefit, and Diſpenſation of ſuch Act to any Subject, nor impower any Subject to diſpenſe with it, or make Warrant to the Great Seal to grant Licences in ſuch a Caſe; For in ſuch Caſe the King, who is the Fountain of Juſtice and Mercy, is truſted with it Pro Bono Publico, and this Confidence is inſeparably annexed to the Perſon of the King in ſo high a Point of Sovereignty, that he cannot transfer it to the Diſpoſition or Power of any private Perſon, or to any private Uſe; For it was committed to the King by all his Subjects for the Publick Good. And if he may grant the Penalty of one Act, he may do ſo in Infinitum; Nor was ſuch Grant known to have been made before; Tho' true it is, that the King, upon Reaſons moving him thereto, in reſpect of Time, Place, or Perſon &c. may make a Non-Obſtante, and diſpenſe with any particular Perſon that he ſhall not incur the Penalty of a Statute, and with this the Books agree. 7 Rep. 36. Hill. 2 Jac. The Caſe of Penal Statutes.

3. The King cannot grant over the *Penalties of Penal Statutes*; Per all the Juſtices of England. Mo. 764. Mich. 3 Jac. Richard's Caſe.

4. 21 *Jac.* 1. 3. *S.* 1. *It is enacted, that all Commiſſions, Grants, Licences, Charters, and Letters Patents, heretofore granted or made to any Perſon or Perſons, Bodies Politick or Corporate, of any Power, Liberty, or Faculty, to diſpenſe with any others,* * *or to give Licence or Toleration to do, uſe, or exerciſe any thing againſt the Tenure or Purport of any Law or Statute, or to give or make any Warrant for any ſuch Diſpenſation, Licence, or Toleration to be had, or made, or to agree, or compound with any others for any Penalty or Forfeitures limited by any Eſtate, or of any Grant or Promiſe of the Benefit, Profit, or Commodity of any Forfeiture, Penalty, or Sum of Money, that is or ſhall be due by any Statute before Judgment thereupon had, and all Proclamations, Inhibitions, Reſtraints, Warrants of Aſſiſtance, and all other Matters and Things whatſoever any way tending to the inſtituting, erecting, ſtrengthening, furthering, or countenancing of the ſame, or any of them, are altogether contrary to the Laws of this Realm, in no wiſe to be put in Execution.*

It appears by the Preamble of this Act, that all Grants of the Benefit of any Penal Law, or of Power to diſpenſe with the Law, or to compound for the Forfeiture, are contrary to the ancient fundamental Laws of this Realm. It was one of the Articles whereupon the **Spencers** in the Reign of E. 2 were ſentenced, that they procured the King to make many Diſpenſations, and ſo by their ill Counſel defeating that which the King had granted by Parliament by good Advice. In 50 E 3 **Richard Lions**, a Merchant of London, and the **Lord Latimer** were ſeverally ſentenced in Parliament for procuring of Licences and Diſpenſations to tranſport Wools &c. 3 Inſt. 186. cap. 86.

* The

* The great Inconvenience hereof appeared in the Proceedings of **Empſon and Dudley** in the Reign of H. 7. who had the Office of Maſters of the Forfeitures, and by Colour of their Commiſſion and Office did moſt intolerably and unlawfully oppreſs, burden, and depauperate the Subjects. The like Oppreſſion was uſed by certain Commiſſioners for Compoſitions to be made for Offences committed againſt Penal Statutes in the Reign of Queen Mary. 3 Inſt. 187. cap. 86.

And ſhall be for ever hereafter examined, heard, tried, and determined by and according to the Common Laws of this Realm, and not otherwiſe &c.

Provided alſo, that this Act ſhall not extend to any Warrant or Privy Seal made or directed, or to be made or directed by his Majeſty, his Heirs or Succeſſors, to the Juſtices of the Court of King's Bench, Common Pleas, Barons of the Exchequer &c. and other Juſtices for the Time being, having Power to hear and determine &c. to compound &c.

By this Proviſo the Judges before whom the Cauſe depends, and that have Power to hear and determine the ſame, who *are preſumed to be indifferent* between the King and the Subject may by Warrant or Privy Seal &c. compound &c. for the King only, after Plea pleaded by the Defendant.

5. 1 *W. & M. Seſſ.* 2. *c.* 2. *S.* 1. *Grants and Promiſes made of Fines and Forfeitures before any Conviction or Judgment againſt the Perſons upon whom the ſame were to be levied, are utterly and directly contrary to the known Laws and Statutes and Freedom of this Realm.*

(M. b. 3) Grant. What the King may grant. *Things not in Eſſe.*

Br. Contempts, pl. 4. cites 11 H. 4. 86. S. C.—— Br. Patents, pl. 12. cites S. C.

1. THE *King granted the Office of Meaſurer of Cloths in London to J. M. and Writ awarded to the Sheriff to put him in Poſſeſſion*, and the *Mayor returned that there is no ſuch Office*; the King *cannot make ſuch Office in Charge of his People* by his Grant *without Parliament*, and the Return awarded good. Br. Retorn de Briefs, pl. 40. cites 12 H. 4.

2. It was agreed, that the King may grant *Fines and Amercements ariſing in his ordinary Courts* whereof he is inheritable; quod nota; and yet they are not in Eſſe at the time &c. Br. Patents, pl. 16. cites 19 H. 6. 62.

3. If the King grants to his Tenant *that his Heir may enter without ſuing Livery* this is good, and yet it is not in the King at the time &c. Per Yelverton, quod Markham conceſſit. Br. Patents, pl. 16. cites 19 H. 6. 62.

4. If the King grants to me, that *if I alien the Manor of B. which I hold of him that it ſhall be diſcharged of the Fine*, by this I ſhall be diſcharged when I alien; Per Hody. Br. Patents, pl. 16. cites 19 H. 6. 62.

5. The Queen ſeiſed of a *Rectory appropriate* granted *Advocationem Eccleſiæ &c.* Manwood Ch. Baron held, That the Advowſon did not paſs, but remained appropriate as before, and that by the Appropriation the Advowſon was gone, and not in Eſſe, and conſequently cannot be granted; And this Grant is not helped by the Statute 4 & 5 *Mar.* of Confirmation of the King's Grants; for that *helps only Miſrecitals, Miſnaming, or Miſtaking &c.* but here is no ſuch Thing in Rerum Natura as is pretended to paſs by this Grant. 2 Leon. 80. pl. 106. Trin. 26 Eliz. in the Exchequer. The Queen v. Lord Lumley.

Raym. 241. S. C.—— 2 Mod. 106. Attorney General and Sir Edward Turner

6. In an Information in the Exchequer, by Engliſh Bill, for *Derelict Lands*, the Caſe was, King James granted certain Marſh-Lands bordering on the Sea to T. S. and Ex uberiori Gratia, he *granted all the Soil, Ground, Land, Sand*, and Marſh-Land *Contigue adjacen'* Præmiſſis, which are *now overflowed and covered with Sea-Water, & quæ ad aliquod Tempus*

in poſterum recuperat' forent per Relictionem Maris &c. *Non Obſtante non nominando valorem, quantitatem vel qualitatem*; After this Grant, 100 *Acres more became derelict* and adjoining to the ſaid Marſh-Lands; and the Queſtion was, Who ſhould have thoſe Lands, the King or the Patentee? It was inſiſted, That the King ſhould have them, becauſe thoſe Lands were Derelict ſince the Grant, and therefore ſhould not paſs by it; For the King cannot grant that which he had not; and that Lands which he had by his Prerogative will not paſs by thoſe general Words in the Grant; but it was anſwered, That the King may grant what is not actually in him at the time, and that here is as much Certainty as the Thing will admit; for it could not appear how many Acres there would be; but admitting it to be incertain, it is made good by the Non Obſtante, which helps all Defaults for want of Information in the King; but it was held per Cur. (with the Advice of the two Ch. Juſtices) that the Grant was void as to the 100 Acres, and that nothing paſſed by thoſe general Words. 2 Lev. 171. Trin. 28 Car. 2. in Scacc. Attorney General v. Sir Edward Farmen.

ſeems to be S.C.—But neither of them mentions any Opinion of the Court.

(M. b. 4) What the King may grant *during Nonage*.

1. 7 *Ed.* 6. 3. C*Onfirms the King's Letters Patents notwithſtanding his Nonage or any Statute heretofore made for the Reſervation of Tenures, Rents, or Tenths.*

2. *Leaſes* made by the King *of Lands of the Dutchy* of Lancaſter are not voidable by the Nonage of the King, in as much as they *paſs from his Perſon as King*, and not as Duke; For per Nomen Regis Nomen Ducis demergitur; by all the Juſtices of both Benches. D. 209. b. pl. 22. Mich. 3 & 4 Eliz. Anon.

S P. whether the Lands lie out of the Dutchy of Lancaſter or within; and in Leaſe, to

the Law is all one where the Leaſe is made of the Land of the Dutchy, which is not in Leaſe, to commence immediately, and where it is of a Leaſe of Land of the Dutchy to commence after another Leaſe before made, the one nor the other is not avoidable by the Non-age of the King; per all the Juſtices, Serjeants, and Counſel (except Ruſwel) Pl. C. 221. b. 4 Eliz. the Caſe of the Dutchy of Lancaſter.

(M. b. 5) *What Things* the King may grant, *notwithſtanding a former Grant*; and in what Caſes ſuch a ſecond Grant ſhall be a Repeal of the firſt Grant.

1. THE King *granted* to W. T. a *Ward, ſo long as it ſhall happen to be in our Hands from Heir to Heir &c.* Afterwards the *Heir came to full Age, and died before Livery* ſued, or Homage done; and after the *King granted the Ward of this Heir to H.* And the Opinion of the Court was, that the ſecond Grant is good, by Reaſon that the firſt did not die in Ward, becauſe he was of full Age, notwithſtanding that he did not ſue his Livery, nor do Homage; and therefore theſe Words (from Heir to Heir) are determined. Br. Patents, pl. 68. cites 14 E. 4. 7.

2. The King was Founder of an Abbey, and *granted a Corody to a Man who was thereof poſſeſs'd*; and *after* the King *granted the ſame Corody to the Abbot and his Succeſſors, and that they ſhall be quit of him and his Heirs*: And ſome ſaid, that the Grant was not good, becauſe the King had not Corody at the Time of the Grant, As of an Office; for the Grantee is thereof poſſeſs'd, and the King has no Reverſion in it; for the King

himſelf cannot have the Corody, nor be Officer; and alſo Corody is incident to the King as Founder, and he cannot releaſe it any more than a Tenure; and the Juſtices e contra. But in the Caſe of the Corody the firſt Grant was recited; and therefore the King is not deceived, and conſequently good; and this *ſhall enure by Way of Extinguiſhment.* Br. Patents, pl. 57. cites 8 H. 7. 12.

See (M. b. 4)

(M. b. 6) Leaſes and Grants of the King, as to the *Dutchy of Lancaſter*, Cornwall &c.

Br. Feoffments, pl. 51. cites S. C.

1. LAND *of the Dutchy of Lancaſter* ſhall paſs from the King *by Letters Patents only*, if it lies in the County Palatine; *but if it lies out, then Livery of and Seiſin ought to be made* of them; for he has them as Duke, and not as King. Br. Prerogative, pl. 72. cites 21 E. 4. 60.

S. C. cited 2 Lutw. 1237. in Caſe of Aſtill v. Clark.

2. Grant of the *Reverſion of Dutchy Lands* without Attornment, under the Dutchy Seal, is a Grant by Record, and paſſes the Reverſion, as a Fine, i. e. to *diveſt the Eſtate without Attornment*; but *not to make Privity to have Action* of *Waſt*, according to Co. 4 Inſt. 209. But if the King will make *Feoffment of it*, *Livery ought to be*, as in Caſe of a Subject; for the King may do this by Attorney. 1 Lev. 28. Paſch. 13 Car. 2. B. R. Carpenter v. Marſhall.

3. 5 & 6 *W. & M.* 18. Enacts that *Grants made by King Charles* 2. &c. *of any Parcel of the Dutchy of Cornwall ſhall be good.*

Provided that ſuch Grants be for 31 Years, or *determinable upon* three Lives, and *not diſpuniſhable of* Waſt; *and that the uſual Rent be reſerved, and if no uſual, then a reaſonable Rent, not being under the 20th Part of the clear yearly Value.*

And that Covenants &c. *ſhall bind Reverſioners.*

Saving *to all Perſons their Rights, except the King and his Heirs, and the Duke of Cornwall and his Heirs &c.*

And that Tenants compounding for the increaſed Rent, the old Rent, or other Rent ſo compounded for, only to ſtand.

And that the Fees &c. for Grants *of ſmall Value ſhall not exceed ſuch a certain Sum, and impoſes a* Penalty *upon Officers offending.*

4. 12 & 13 *W.* 3. 13. Enacts that *all Leaſes &c. made by King Ch.* 2. *King Ja.* 2. *or King William and Queen Mary &c. of any Offices, Lands, &c. in the Dutchy of Cornwall, ſhall be good in Law &c.*

Provided that the Leaſes be not for more than three Lives, or thirty-one Years.

And that Covenants &c. *in ſuch Leaſe or Grant &c. ſhall be good and effectual in Law, according to the Words.*

Saving *to all Perſons &c. their Right, except the King and his Heirs, and the Duke of Cornwall and his Heirs.*

And that Tenants compounding for taking off any increaſed Rent &c. *on Payment of Compoſition Money, ſuch increaſed Rent to ceaſe &c.*

And that the King may make any further Grant of Grounds &c. being Part of his Manor of Greenwich, to the Uſe of Greenwich Hoſpital.

5. 6 *Annæ* 25. Enacts that *all Leaſes made of Lands &c. Parcel of the Dutchy of Cornwall*, by Copy of Court Roll, *or within* 7 *Years next enſuing, according to Cuſtom of Manors of the ſaid Dutchy, ſhall be good in Law.*

Provided that no Leaſe be for more than 3 Lives, or 31 Years.

And that all *Covenants &c. in Leaſes &c. ſhall be good according to the Words.*

Saving *to all Perſons &c. their Right, except the Queen and her Heirs, and the Duke of Cornwall and his Heirs.*

And

And on Payment of Compoſition Money for taking off increaſed Rent, *ſuch increaſed Rent ſhall ceaſe.*

(M. b. 7) What the King may grant *without Record* or Inrollment.

1. NOthing ſhall *paſs* from the King *but by Matter of Record*; Per the Juſtices of C. B. Br. Prerogative, pl. 70. cites 14 E. 4 2. The King may give *ſeveral Things without Writing, and yet* if it comes in Ure *in* the *Law, it is good for nothing*; per Brian clearly. Br. Prerogative, pl. 61. cites 4 H. 7. 6. *But* Shelley J. was preciſe in the Time of H. 8. that it is a good Gift of *Chattels moveable* without Writing, as of a Horſe &c. Ibid.——S. P. Br. Prerogative, pl. 70. cites 35 H. 8.

2 If the King *grants the Reverſion of his Tenant for Life by Patent*, this is good without Attornment, by Reaſon that the Letters Patents of the King *are Matter of Record*. Br. Prerogative, pl. 95. cites 34 H. 6. 7. 8.

3. 4 & 5 *W. & M.* 22. *No Corporations, Lords of Manors, or others having Grants by Charter or other good Conveyances, who have inrolled and had the ſame* allowed by the Court of King's Bench, *ſhall be compelled to* plead the ſame to any Inquiſition, *returned by any Coroner. And if any Corporations, Lords of Manors, or others, have or ſhall have ſuch Grants from the Crown for* Felons Goods, Deodands, *or other Forfeitures, they ſhall not be compelled to* inrol *their whole Charters or Grants, but* ſuch Part thereof as may expreſs the Grants of ſuch Felons Goods, Deodands and *Forfeitures, and no more; for doing whereof the Clerk of the Crown ſhall receive 20 s. for his Fee, and no more; and from and after ſuch Inrollment, they ſhall not be compelled to plead the ſame to any Inquiſition.* This was a Temporary Act, but *made perpetual by* 7 & 8 *W.* 3. *cap.* 36. *S.* 4.

4. 10 *Annæ* 18. *Reciting, that ſeveral Grants have been made by the Crown under the Great Seal, Exchequer Seal, and under the Seals of the Dutchy of* Lancaſter, *of Lands in* England *and* Wales, *to take Effect in Poſſeſſion, or by Way of future Intereſt,* for one, two or three Lives, or *for ſome certain Term of Years,* not exceeding 50 Years, *or for ſome other Eſtate and Term, not to exceed* 3 *Lives, or* 50 *Years,* from the Date *of ſuch Grant or Leaſe, with Covenants importing that the ſame* ſhall be inrolled before the Auditor *of each County within a Time limited, which have not yet been inrolled, ſo that the ſaid Leaſes are void or voidable.* Enacts that *all Perſons, having before the* 3*d of March* 1711. *omitted to inrol ſuch Leaſes, ſhall before the* 3*d of March* 1712. *bring them to the proper Auditor to be inrolled; and that in ſuch Caſe the Leaſe ſo inrolled within that Time ſhall, upon the Inrollment thereof, and Payment of all Rent Arrear, be adjudged to have its Being, as if no Forfeiture for Want of Inrollment only had been incurred.*

Provided that this Act ſhall not continue any Leaſe which has been adjudged in any Court to be forfeited.

(M. b. 8) *Where Grantee* of the King *ſhall have* like *Prerogative* as the King ſhould have.

1. THE Grantee of the King *of a Ward, or of his Land, of whom another holds by Service of Chivalry, with Fees and Advowſon,* ſhall have Prerogative; ſo that if *another Ward falls, who holds of the firſt Ward,* he ſhall have the laſt Ward by the Prerogative, *tho' he holds of another* Br. Gard. pl. 28. cites S. C.

another by Priority, who does not hold of the firſt Ward, by Reaſon that the *King remains Guardian*; and Livery ſhall be ſued out of his Hands, notwithſtanding this Grant made to the other; quod nota; that he ſhall have Prerogative. And there the *Grantee of the* King's *Grantee ſhall have the Prerogative*, as it ſeems; for all is one Reaſon. Br. Prerogative, pl. 17. cites 12 H. 4. 18. 25.

Br. Patents, pl. 18. cites S. C.

2. It was ſaid by Hill J. that the King has Prerogative, that he ſhall have the *Ward of the Body of his Tenant*, tho' he *holds of him by Poſteriority*, and yet he cannot grant it to another by Grant of the Seigniory to a Subject: for he ſhall not have the Prerogative. Br. Prerogative, pl. 18. cites 14 H. 4. 9.

And the King may diſtrain in all the Lands of his Tenant *for his Service*, but his Grantee ſhall not do ſo; and ſo ſee that in ſuch Caſes the King's Patentee ſhall not enjoy the Prerogative of the King, becauſe he is a Subject. Ibid.

3. It was held, that if the King *has a Rent-charge in my Land*, he may *diſtrain for it in all my Land* by his Prerogative; but his Grantee ſhall not do ſo. Br. Prerogative, pl. 68. cites 13 E. 4. 5. & 6.

4. If the *King purchaſes a Seigniory, of which Land was held by Poſteriority*, the King ſhall be in a better Condition than the Subject from whom he claims, and *ſhall have the Priority*. And ſo ſhall his Grantee alſo in ſuch Caſe. 5 Rep. 56. b. Mich. 30 & 31 Eliz. C. B. in Knight's Caſe, cites 24 E. 3. 65. Fitz. Tit. Gard. 27. 47.

D. 375. b. pl. 21. — D. 176. b. pl. 30. Marg. cites it held, that the King had only Veſturam terræ, and could not grant Copyholds. Lady Baſſet's Caſe.

5. If the King licenſes A. to go beyond Sea for a certain Time, and after this Time is expired A. is commanded under the Privy Seal, upon his Allegiance, to return to England, and does not obey, his Goods, Chattels, and *Lands*, ſhall be *ſeiſed* into the Hands of the King *for* this *Contempt*. And it was reſolved by all the Judges of England, That if A. in this Caſe, has a *Manor* where there are *Copyholds and Timber fit to be fell'd each Seaſon*, and the King grants it quam diu in Manibus noſtris fore contigerit, it is good; and ſuch *Patentee may* keep Courts in his own Name, *and grant Copies, and fell ſeaſonable Timber*. Jenk. 246. Pl. 35.

(M. b. 9.) Grantee of the King. *In whoſe Name* he may *ſue*; and how.

1. KING granted *Annuity*, which he had, over, and the Grantee brought an Action in his own Name. D. 1. b. pl. 7. Marg. cites 3 H. 4. 8. 2.

2. If the *King's Grantee of a Ward be ouſted of the Land, or if the Rents are levied by a Stranger by Tort*, the Grantee *ſhall not have Treſpaſs in Contemptu Regis*, but ſhall have a Writ of Ejectione Cuſtodiæ. Br. Ejectione &c. pl. 9. cites 11 H. 4. 64, 65.

3. *Where the Grant is of All Iſſues, Fines, Amerciaments &c. and that the Patentee may levy them by himſelf or by his Servants*; there the Party may collect, and levy it, and the Sheriff of that which is warranted by the * Grant, ſhall have Allowance of it; but where the Grant is of Fines and Amerciaments as above, without the Words, (To levy them by himſelf or his Servants) there the *Sheriff ſhall levy them, and the Patentee ſhall ſue to the Court for them by Petition*; for they lie in Allowance by the Juſtices, quod fuit conceſſum; quod nota. Br. Patents. pl. 4. cites 9 H. 6. 27.

* All the Editions are (Grantee.)

4. The King has a *Bond* by *Outlawry* of an Obligee, who grants this over, and alſo that the Grantee may ſue in his own Name; and ſo he did, and adjudged good. D. 1. b. Pl. 7. Marg. cites 19 H. 6. 47. 2.

5. A.

5. A. was *outlaw'd for Treaſon.* — The King made a *Grant to B. who brought a Bill in Chancery* for certain Goods of ſuch a Value *againſt C. who had A's Goods in his Poſſeſſion.* 'Twas objected, that their Remedy was at Law by Detinue; but 'twas anſwer'd, that no Action lay at Common Law 'till Seizure, or finding by Matter of Record; but however, that the King had Election to proceed at Common Law, or in Equity; And the Court held, that Subpæna lay, and *ordered C. to make an Inventory againſt the next Day*, or that he ſhould be ſent to the Fleet. 39 H. 6. 26. b. Walſwyn v. Smith.

Br. Conſcience. pl. 6. cites S. C — Br. Choſe in Action. pl. 5. cites S. C. — Of *Goods forfeited* by Outlawry or Attainder of *Treaſon* the Property is in the King immediately; and the King may grant them over immediately, and the Grantee may have an Action in his own Name. Br. Forfeiture de terres. Pl. 26. cites S. C.

6. If *Bond* be forfeited to the King by reaſon of *Outlawry*, and the King gives this to a Stranger, yet the Action ought to be ſued in the Name of the King, and not in the Name of the Grantee; but if the King * grant *Recognizance* to another, he ſhall ſue this in his own Name, and not in the Name of the King. D. 1. pl. 7. Paſch. 4 H. 8. —The ſame Difference taken by Read J. Kelw. 169. in the Prior of Sheen's Caſe.

* Grantee ſued in the King's Name. The Defendant pleaded the Grant in Bar, but held no Bar; and that notwithſtanding the Ch. J. after Grant the King may ſue in his own Name, and ſo may the Patentee; but by Manwood, Aſſignment of a Bond, perhaps the King cannot ſue in his own Name, becauſe 'twas not originally made to him. Savil. 2. Lee v. Brierton.

7. B. was *attainted of Treaſon*, and *having certain Obligations* which became forfeited, the King *granted them to B's Wife, without any Words enabling her to ſue for them in her own Name.* She brought Information upon them in her own Name. It was adjudg'd (as the Reporter ſays he heard) that the Action was well brought, for the King only can grant Choſes in Action; and, by the ſame Reaſon that he has granted the Obligations, which are the Subſtance and the Original of the Actions, the Law implies that the Grantee ſhall uſe the Means to come at the Thing granted &c. D. 30. b. pl. 208. Hill. 28 H. 8. Breuerton's Caſe.

Sav. 2. ſeems to be S. C. by the Name of Lee v. Brierton.

8. A *Scire facias* iſſued out in the Queen's Name to ſhew Cauſe why Execution of a Debt which is come to the Queen by Attainder of J. S. ſhould not be had. The Defendant pleaded, that the Queen had granted over this Debt by the Name of a Debt which came to her by the Attainder of J. S. and all Actions and Demands &c. Upon which the Plaintiff demurr'd; and the Queſtion was, If the *Plaintiff might ſue in the Queen's Name without ſpecial Words?* And two Precedents were cited, that he may. P. 36 Eliz. Rot. 191. in Scacc. Where Green, to whom a Debt was due, was attainted, and the Queen granted over this Debt, and all Actions and Demands, and a Scire facias was ſued for him in the Name of the Queen. And another in the 32 Eliz. Rot. 219. Mabb, of London, was indebted by *Bond*, and the Debt came to the Queen by the Attainder, and ſhe granted it to B. and all Actions and Demands; and a Scire facias was iſſued in the Queen's Name; and the principal Caſe was adjourned; but the Patentee had expreſs Words to ſue in the Queen's Name, tho' it was not pleaded. Ow. 113. Paſch. 36 Eliz. Allen's Caſe.

Nota, In truth there were *ſpecial Words* in the Patent that he might ſue in the Queen's Name; but this was *not pleaded*, and the Court held clearly, that had it been pleaded, the Suit might be in the Queen's Name, for ſhe had Liberty to grant to ſue in her Name. Cro. E. 225. S. C. ——— So where the Grant was *to ſue in the Name of the Queen and her Succeſſors*, it is a good Warrant; and in a ſucceeding King's Time, all Proceſs ſhall be made in the King's Name, as if no Grant had been made thereof. Cro. J. 82. Mich. 3 Jac. in Scacc. The King v. Wendman.

9. A. recovers *Damages in Action Sur Caſe*, and afterwards is outlaw'd.— The King grants them over.— The Grantee may levy this Debt by Action in his own Name, or by Extent in the King's Name, tho' he has no Words in his Grant to ſue it in the King's Name as is uſual in ſuch Caſes. But an *Aſſignment over* of this Debt by the Grantee to another is merely void. Cro. J. 179. Trin. 5 Jac. King v. Twyne.

Savil 133. York v Allen. S. P.

10. A *Scire facias* is a *Writ of Right*, where the *Patent is prejudicial to a Subject*; and the Crown ought to ſuffer the Subject to uſe their Name. Arg. by Northey, Attorney-General (cites D. 197, 198. 11 Rep. 74. 8 Rep. Prince's Caſe. Fitzh. tit. Brief 651. 2 Vent. 344. Sir Oliver Butler's Caſe. 3 Lev. 220.) 10 Mod. 260. in the Caſe of the Queen v. Aires. — Adjudged Hill. 3 Geo. 1. 10 Mod. 354. B. R. The Caſe of the Queen v. Aires.

See (T. b.)

(N. b) Grants of the King. *Falſe Suggeſtion.*

S. P. And if the Suggeſtion reſts in Articles, if *any of the Articles are falſe* the Patent is void. Br. Patents. pl. 48. cites 3 H. 7. 6.

1. IF the Grant of the King be upon a falſe Suggeſtion it is void, becauſe the King is deceived. Co. 11 Earl of *Devon.* 90.

Jenk. 261. pl. 60. cites 9 H. 6. Legat's Caſe — S. P. If the Difference of the Value be found after by Matter of Record. Br. Patents. pl. 4. cites 9 H. 6. 27. per June. *But falſe Conſideration* in a Patent will not avoid the Patent; *As* if the King, in Conſideration *of* 100 *l. to him paid* &c, grants, where *he paid only* 60*l.* yet the Patent is good. Br. Patents. pl. 4. cites it as ſo ſaid. 37 H. 8. Br. N. C. 37 H. 8. pl. 310.

2. As if a Man ſues to the King by Petition to have a certain Manor, and ſays in the Petition, that it is worth but 10 l. per Annum, and thereupon the Patent is granted; if it be of the Value of 40 l. the Patent is void. 9 H. 6. 28 b. Co. 10. Arth. *Legat.* 112.

Jenk. 304. pl. 77. cites 9 H. 6. — 1 Rep. 40. b. Alton-wood's Caſe. — 10 Rep. 109. Arthur Legat's Caſe. — Br. Patents. pl. 4. cites S. C. per June. — Br. N. C. 37 H. 8. pl. 310.

3. So if the King has Title and Right to Land, of which A. is ſeiſed, and after A. is attainted of Treaſon, by which the King ſeiſes, if I ſue to the King to have this Manor, which comes to him by Cauſe of Treaſon, and Patent is made accordingly, it is void. 9 H. 6. 28. b. for the falſe Suggeſtion.

See (Q. b) pl. 1.

4. If a Leſſee for 40 Years of a Mill and Houſe leaſe the Houſe for 20 Years, and then ſurrenders to the King, and therein recites, that he has all the Eſtate, Title and Intereſt, which the firſt Leſſee had, and which is contained in the Patent; and thereupon the King grants a new Leaſe, by other Patent, to him who ſurrender'd it; This is void becauſe the Recital is falſe, inaſmuch as he had but the Reverſion of Part, and this is the Suggeſtion of the Party. Ergo. P. 10. Ja. Scacc. between *Sawyer* and *Eaſt.* Adjudged.

5. In Aſſize, 'twas found by Verdict, that *L. enfeoff'd the Baron and Feme in Fee*, and after the *Baron was found guilty of Felony*, and arraign'd, and he took to his Clergy, and was deliver'd to the Ordinary, for which the *Tenements were delivered into the Hands of the King.* And after the Baron *broke the Priſon* of the Biſhop, and the *Lord ſued in Chancery to have the Land by Eſcheat* out of the Hands of the King, and had it, and a Writ ſent to the Eſcheator; and becauſe the Feme had a joint Eſtate with the Baron, and the *Tenements were deliver'd out of the Hands of the King by falſe Suggeſtion*, this Suit was adjudg'd *Diſſeiſin in the Lord, who enter'd by this Livery*, and the *Feme recover'd by Award*; *and* becauſe ſhe *brought the Aſſiſe as a Feme ſole*, and the *Defendant pleaded to it as to a Feme ſole*, therefore it ſhall not be argued whether the Baron be alive or dead; and therefore it ſeems that the King does not make [Claim] but for the Year, Day, and Waſte, and then *the Entry of the Lord* by the Livery *obtained by the falſe Suggeſtion* made the Diſſeiſin, and

and there was no Diſſeiſin during the Poſſeſſion of the King. Br. Aſſiſe. pl. 114. cites 4 Aſſ. 4.

6. *Tenant in Taile*, the *Reverſion to the King purchas'd Licenſe to Alien in Fee, and to retake Eſtate to himſelf and his Feme in Taile*, the *Remainder to his Right Heirs*. This Licence ſo purchas'd by falſe Suggeſtion is void, and the *Alienation is no Diſcontinuance of the Reverſion of the King*, where the King is deceiv'd in his Licenſe. Br. Diſcontinuance de Poſſeſſion. pl. 16. cites 40 Aſſ. 36.

7. If a Man makes Suggeſtion to the King to have an Office, and obtains it; if the Suggeſtion be falſe the *Patent is void*; becauſe the King is deceived in his Grant. Br. Patents. pl. 26. cites 37 H. 6. 27. per Billinge.

8. *Matter in Fact expreſs'd* in the King's Patent, *which is falſe*, ſhall not prejudice, nor is it material; *As if* the King *reciting* in his Patent *the good Service which J. S. has done him ultra Mare*, or the like, grants to him ſuch Land, *where in fact he did no ſuch Service*, yet the Grant is good. Per Fitzherbert Juſtice Quod *Mirum*. For it appears elſewhere, and in 9 H. 6. 28. that if the King makes a Grant upon *falſe Suggeſtion*, which is only Matter in Fact, *the Patent is void*; but Brook ſays, there ſeems to be Diverſity between *falſe Suggeſtion* and *falſe Conſideration*. Br. Patents. Pl. 1. cites 25 H. 8. 1.

9. Haule had a Dutchy *Leaſe gotten upon untrue Surmiſes*, and the King beſtow'd the Land upon the Earl of Devon for his Service done in Ireland. This Leaſe the Earl ſought to avoid by Law; Haule prays to have the Matter examined in Chancery, and to have the Suit ſtay'd by Injunction; which was denied, for that the Leaſe was granted by Fraud, and the Fee Simple to the Earl in Poſſeſſion, and not in Reverſion; and nota, that the Lord Chancellor ſaid, That where Lands are granted in Reverſion, if the Grantee will avoid the Leaſe for a Rent paid, but not at the Day; in that Caſe, he will relieve, but not where the Leaſe is granted upon a wrong Suggeſtion, for that were to relieve Fraud in Chancery. Cary's Rep. 45. cites 23 Jan. 1 Jac.

10. King Ph. and Queen M. ſeiſed of the Manor of Wimondham in the Right of their Crown, ex ſpeciali gratia &c. granted to G. H. (inter alia) *omnes illas duos pecias terræ noſtras called N. and W. lying in W. now or late in the Tenure of J. C.* &c. *Quæ quidem omnia* * *a nobis &c. concelata* & detenta &c. and it was found by Verdict, that the *Manor was not concealed* or detained from the King, *but* that it *was in Onere & Computo, and the Rents* and Profits were *paid to the King, except only of the ſaid two Parcels* of Lands which were not paid to him. It was adjudged, that tho' the Grant was ex certa Scientia, Gratia ſpeciali & mero motu; and notwithſtanding the Certainty as to the Thing, the Quantity, the Ville, the County, the Occupation, and the Title; yet it being *made upon a falſe Suggeſtion* of the Party, that the Manor was concealed from the King, when in truth it was not, the Grant was therefore void. 10 Rep. 109 &c. Mich. 10 Jac. C. B. Arthur Legat's Caſe.

* 2 And. 19. S. P.

(N. b. 2) Falſe Suggeſtion. *Puniſhment* thereof. *Meſne Profits.*

1. TENANT of the King in Tail obtained *Licence to alien in Fee to two*, and *retook* of them *by Fine for Life*, the *Remainder to E. and J. his Feme, and to the Heirs of E. who was Son of the firſt Feoffor, who was Tenant of the King.* The *Feoffor died, and E. his Feme got Livery upon Office found*; and after Fine was found in the Treaſury, by which it appeared, that the *Feoffor had nothing but in Tail at the Time of the*

the Alienation, which was ſent into Chancery, and from thence by Writ; whereupon Scire facias was awarded againſt Baron and Feme, if they had any Thing to ſay, why the Land ſhould not be reſeiſed according to the Statute of Lincoln, and to remain in the Hands of the King during the Nonage of [E.] who is within Age, and Heir to the Feoffor; and it was reſeiſed by Award, becauſe the *Licence was void*; for the King was deceived in his Grant, inaſmuch as he knew not but that the Feoffor had been ſeiſed in Fee, quod nota; and it appears often in the Book of Aſſiſes, that Licenſes obtained upon falſe Suggeſtions are void. Br. Alienation. Pl. 28. cites 21 Aſſ. 15.

Br. Iſſues ret. pl. 11. cites S. C.—Br. Alienation. pl. 13. cites S. C.—Br. Diſcontinuance de Poſſeſſion. pl. 16. cites S. C.—Jenk. 44. pl. 85. cites S. C

2. Suggeſtion was made in Chancery, that *Tenant in Tail* the *Reverſion to the King purchaſed Licenſe* of the King *to alien in Fee, and to retake to him and his Feme in Tail, the Remainder to his right Heirs*; the which was obtained, and the Eſtate made accordingly; the *Baron died, the Feme married K.* and after the *Feme died*, and *Scire facias iſſued* upon the Suggeſtion *againſt K. to ſay why the King, who now has the Ward of the Heir of the firſt Baron, ſhould not be reſtored to the Iſſues for the Time of the Nonage for the Time which K. occupied*; and becauſe this Licence was in Deceit of the King, and his Reverſion by this not diſcontinued, it was awarded, that in Right of two Parts of the Land, he ſhall be charged for the Time which he occupied, and that of the third Part he ſhall be diſcharged, becauſe of this the Feme was Dowable. Br. Patents. pl. 37. cites 40 Aſſ. 36.

See (P. b.)

(O. b) In what Caſes the King ſhall be ſaid to be * *deceived* in his Grant, [*and ſo the Grant void.*]

* There is a Difference to be obſerved in all Caſes where the King is ſaid to be deceived in his Grant: If the Matter which is falſe in the Letters Patent *be ſuggeſted on the Part of the Grantee, and that to the Prejudice of the King*, there the King ſhall be ſaid to be deceived in his Grant ſo as to make it void. Adjudg'd 12 Mod. 78. Trin. 7 W. & M. King v. Kemp. — *But* where the Words of the Letters Patent are *Words of the King*, altho' the King *appears by his Inference to be miſtaken even in his Law*, yet the King ſhall not be ſaid to be deceived ſo as to avoid his Grant. If the King grants an Eſtate in *Poſſeſſion when he intends only to grant it in Reverſion*, or where the Thing granted is of a *greater Value* than it appears in the Grant to be of, theſe are Suggeſtions of the Grantee, and the Death of the King in theſe Caſes ſhall make the Grant void; but if the King be not deceived by any Matter ſuggeſted by the Grantee, but is *only miſtaken in his own Affirmation or Surmiſes*, altho' it be in the Law itſelf, ſuch Grants are good, and ſuch Conſtruction of them ſhall be made as tend to their Support; and upon this Difference the Books are plentiful. 8 H. 7. 3. Dy. 197. b 352. a. 2 Cro. 34. 2 Brownl. 242. 11 Co. Auditor Curle's Caſe. Mod. Rep 197. So that where he is not ſo deceived, the Grant ſhall not be void, if by any Conſtruction it can be made good. Adjudged 12 Mod. 78. Trin. 7 W. & M. The King v. Kemp.

1. † **If the King** grants an Office for Life, and after grants it in Reverſion to B. which is void, and afterwards recites the Grant to B. as a good Grant, and grants it to commence after it, **the King is deceived in this laſt Grant, and therefore void. Co. 11. Auditor** *Curle.* 4. b.

† A has Office for Life, the King, *reciting the Grant, and that A. is alive*, grants the ſame to E. of R. for Life, without ſaying, After the Death &c. of A. This Grant is good to commence after the Death &c. of A. 8 Rep. 55. Earl of Rutland's Caſe. — S. C. cited 12 Mod 79. in the Caſe of the King v. Kemp.

The King may grant an Eſtate in an Office to commence in futuro, or upon a Contingency, which Eſtate ſhall ariſe out of the Inheritance he hath in the Office itſelf; for ſuch he may have in Point of Intereſt, tho' not in Execution. Per Curiam. 4 Mod. 280. Paſch 6. W. & M. B. R. in the Caſe of the King v Kemp.

The King granted to J. S. Sciatis *quod de gratia noſtra ſpeciali Conceſſ'* &c. quantum in nobis eſt, *that he may give a Houſe in E. to the Abbot of F.* and the *Houſe was held of the King*, and *no Mention* that he may give &c. *tho' it be held of us in Capite*; and ſo the King, not appriſ'd of

2. **If the King** ex gratia ſpeciali grants Licence **to B.** to alien certain Land in Mortmain, **B. may alien the Land in Mortmain by force of this, tho' he holds it of the King in chief, and the King ſhall not be ſaid to be deceived. 41 Aſſ. 16. Adjudged.**

of his Grant. But Per Knivet. Ch. J. the Grant is good; for the Intent of the King appears. Br. Patents. pl. 38. cites 41 Aſſ. 19.— *So* where *two Manors* are *held of the King*, the *one in Chivalry*, the *other in Socage*, and the *King grants by Words as above, that he may amortiſe both*, this is good; and yet the one Manor is a greater Loſs to the King than the other; and, becauſe it was the Will of the King, that the Houſe ſhould be amortis'd, and the Grant is *de Gratia ſpeciali*, therefore it was awarded that the Grant was good. Ibid.

3. If the King preſents A. and upon Refuſal brings Quare Impedit, and, pending this, B. procures Letters Patents to preſent himſelf, without mention of the firſt Preſentment **and this is obtained by Fraud, and in Deceit of the King, it is a void Preſentment, and therefore ſhall not repeal the firſt.** Dy. 17 El. 339. 47. **Adjuged.**

See (Q. b. 2) pl. 5. The Vicarage of Yatton &c. came to the Queen by Lapſe, the Biſhop of the Dioceſe collated L. to it by Lapſe, and afterwards the Queen preſented one to the Vicarage, who brought a Quare Impedit againſt the Biſhop and his Collatee; pending which Suit, the Collatee by *Fraud and Covin obtained a Preſentation from the Queen, without mentioning her Pleaſure to revoke the firſt Preſentation*. The Queen by Letter certify'd the Court, that ſhe had forgot her former Preſentation, and ſaid her Pleaſure was that it ſhould ſtand; Judgment was given for the Queen, becauſe the Fraud and Deceit made to the Queen was confeſs'd by L's Demurrer, tho' the Notification of it was not under the Great Seal. D. 339. b. pl. 47. Hill. 17 Eliz. The Vicar of Yatton's Caſe.—*But* if the King preſents one to a Benefice, and before Admiſſion he preſents another *without Fraud or Covin in the ſecond Preſentee*, this is a good Revocation of the firſt Preſentment, without expreſs Clauſe of Repeal in the Patent; but *if the firſt Preſentee be admitted and inſtituted*, then ſuch ſecond Preſentation is no Repeal of the former Preſentment, without a Recital thereof, and of the Admiſſion and Inſtitution thereupon; and alſo there ought to be expreſs Clauſe of Revocation of the ſaid firſt Preſentment, and of the Admiſſion and Inſtitution thereupon, mention'd in the ſecond Letters Patents of Preſentment; and this Difference was adjudg'd. D. 239. b. Marg. cites Paſch. 9 Jac. in the Exchequer. Calvert v. Kitchen.

4. If the King preſents, and after repeals it, and gives Notice thereof to the Ordinary, and yet the Ordinary afterwards inſtitutes and inducts him; and after the King recites, that where the Incumbent was Canonice Inſtitutus of his Preſentment, he confirms it **to him for his Life. This is a void Confirmation, becauſe the King is deceived, inaſmuch as he was not inſtituted of his Preſentment.** D. 12. El. 292. 70. **Adjudged.** 25 E. 3. 47. **Adjudged.**

5. So **it would be in the ſaid Caſe** if the Ordinary after the Repeal **made**, and before Notice **of it to the Ordinary**, had inſtituted and inducted him; **For the Notice is only material to make the Ordinary a Diſturber.** D. 12 El. 292. 70. 25 E. 3. 47. **Adjudged. And no Notice alleged.**

6. **If a** Benefice above the Value of 20l. per Annum, comes to the King by Lapſe; **and** the Chancellor being informed, that it was under the Value of 20l. preſents to it under the Great Seal, **and the Preſentee thereupon inſtituted and inducted, he cannot be afterwards removed; for the Preſentment is by the King, being under the Great Seal; and there is not any Difference in Form, when it is for the King, and when for the Chancellor, ſaving, that for the moſt Part, the one is** Mandantis, **and the other is** Rogantis, **the Confuſion of which Words are not of any Moment.** Hob. R. 289. **Lord Chancellor's Caſe.** * C. 272.

Fol. 189. Hob. 214. pl. 273. S.C. — Jenk. 292. — pl. 33. S. C. S. P. was referr'd to Hobart. Ch. J. and Tanfield. Ch. B. to certify whether this was merely void. [The Book ſays] It remain'd good 'till it was avoided. Winch. 19. Trin. 19 Jac. Parſon and Morlee's Caſe.— [* The Letter (C) ſeems to ſtand for (Caſe,) but if ſo it is miſprinted, and ſhould be (Caſe 273.)]

7. But, **in the ſaid Caſe**, if the Preſentment **itſelf under the Great Seal** had recited, That the Benefice had been under the Value of 20l. **there the Preſentment had been void, becauſe there the King was deceived.** Hob. R. 289. C. 272.

Jenk. 292. pl. 33. S. C — Hob. 214. pl. 273. S. C.

8. Where *the Biſhop of W. had Conuſance of Pleas, Fines, and Amerciaments in D. and the King had it Tempore Vacationis*, and *granted them to the Mayor and Burgeſſes of D. a* Scire Facias iſſued againſt them to repeal the Patent, becauſe the King was deceived in his Grant. Br. Prerogative, pl. 99. cites 16 E. 3. and Fitzh. Brief 651.

Neither the Queen nor the King's Son are reſtrained by this Statute concerning Grants by the King. Co. Lit. 133. S. P. Br. Livery, pl. 16. cites 7 H. 4. 4. 41.

9. 1 *H.* 4. 6. *To the Intent that the King might not hereafter be deceived in his Grants, he is content (by the Aſſents of the Lords Spiritual and Temporal, and at the Requeſt of the Commons) to be hereafter concluded by the wiſe Men of his Council in Things touching the Eſtate of him and his Realm, ſaving always his Liberty.*

In a Petition to the King for Lands, Annuities, Offices &c. their Value ſhall be therein expreſſed; otherwiſe the Letters Patents thereupon had ſhall be void.

10. The King *granted* the *Land in Ward to one for Life*, the *Remainder over in Fee*, and was deceived in his Grant, and therefore he, at the Suit of the Heir, by Scire facias repealed the Letters Patents, and reſumed the Land, and made Livery to the Heir; quod Nota. Br. Patents, pl. 10. cites 7 H. 4. 42, 43.

11. If the King be *ſeized of an Advowſon in Fee*, and *grants it to J. S. Habend. after the Death of W. N.* this is a void Grant; Becauſe he is ſeiſed in Fee, and has no Reverſion therein. Br. Patents, pl. 29. cites 38 H. 6. 34. 35.

12. If the *King gives Land to W. N. and to his Heirs Male*, the Patent is void, and he is only a Tenant at Will; for the King is deceived in his Grant. Br. Eſtates, pl. 84. cites 18 H. 8.

S. P. For this founds in Fee Simple, whereas it ſeems, the King *intended only an Eſtate Taile*, which is not ſo expreſſed, and therefore now he is only Tenant at Will; but contra in the Caſe of a Common Perſon. Br. Patents, pl. 104. cites S. C. Lovel's Caſe.

* *As* if the King *grants his Manor of D. in D.* and there *is not any ſuch Vill*, yet the Grant is aided by the Statute, becauſe the Name of the Manor is certain enough;

13. The Queen by the Words of *Ex certa Scientia, & mero motu, granted* to A. *the Manor of D. which ſhe had by Attainder of Sir T. Wyat*; whereas in Truth, *ſhe was ſeiſed by Deſcent.* Dyer thought the Grant void, and Brown and Weſton J. agreed, That it was void at Common Law; For in every Caſe where the King is deceived in himſelf, or of the Information of the Party, the Patent ſhall not be allowed contrary to the King's Intent; But in this Caſe the Patent is *ſupply'd by the Statute of Miſrecitals; for when the Subſtance of the Thing granted appears certainly* the * Statute ſupplies all other Defects. Mo. 45. pl. 137. Mich. 5 Eliz. Anon.

But when the Certainty of the Thing granted does not appear, it is otherwiſe; as where the King grants an *Advowſon appendant, where it is in Groſs*, it does not paſs becauſe it is not the ſame Thing. Ibid. —— *So* if the King grants the *Manor of D. in ſuch a County*, where there are *two Manors of the ſame Name in the ſame County.* Ibid.

* This Reaſon does not appear in Dier.---Mo. 416. S. C. cited by Coke Attor. Gen. Arg. in Wells's Caſe; and that it was adjudged upon Scire

14. The King was ſeiſed of the Manor of Torrington, with a *Market* held every Week on *Saturday*, and a Fair *in Vigilio Feſti & Craſtino Sancti Michaelis*, and incorporated the ſame, & ex certa Scientia granted to them to have a Market every *Saturday*, and two Fairs every Year, one *in Vigilio Feſti & Craſtino Sancti Michaelis*, and the other on the Feaſt of St. George the Martyr. Adjudged, That this Grant was void; For the King was * not apprized of what he granted; For his Intent was ex ſpeciali gratia, & ex certa Scientia, *to grant a new Fair* at Michaelmas; and not to grant that Fair *which they had before.* Nelſ. Abr. 900. pl. 2. cites Dy. 276. the Caſe of Torrington.

Facias in Chancery, in 19 Eliz. That *the Queen having a Fair* in Torrington, *to be held in the Feaſt of St. Michael*; She *incorporated the Town, and without mentioning her Fair*, ſhe *granted to the Corporation* to have *a Fair* to be held *in Vigilia in Feſto & in Craſtino &c.* and adjudged the Grant void, by the Aſſiſtance of the Judges; Becauſe the Queen is to have the Old Fair, and to the Grant void, and then no *Fractions* can be *to give a Fair to the Corporation in Vigilia & Craſtino.*——D. 2. 6. pl. 52. is that the Queen granted to the Corporation a Market every Saturday, and two Fairs in Vigilia & Craſtino Sancti Michaelis, & *aliam in Die Sancti Georgii Martyris, & duobus Diebus proxime ſequentibus.* But it does not appear in Dy. whether the Grant was adjudged void.--In the Caſe of Alton Woods. 1 Rep. 50. a. Popham. Ch. J. ſays he was of Council in this Caſe, and that it is not fully reported in Dyer. He States it to be adjudged a void Grant; For the *old Fair* cannot paſs, becauſe it was plainly the Queen's Intent to create *a new one*; for, he adds, there was a *Clauſe* in the Grant (viz.) *niſi Mercatum & Nundinæ illæ eſſent ad Nocumentum vicinorum Mercatorum & vicinarum Nundinarum*; which Words are always uſed in the granting a new Fair. But in the Caſe of a *common Perſon*, the *old* one ſhould have paſſed without Queſtion; and for that cites Dy. 252. 18 Eliz. —— It did not appear to the King that he had an old Fair, but he intended as the Words import to grant a new one, and not the Fair in Eſſe, and therefore the Grant is void. 2 And 156. cites S. C.

15. King

15. King H. 7. being ſeiſed of the *two Manors* of Ryton and Condor in Shropſhire, he *granted* ex certa Scientia &c. *totum illud Manerium*, of Ryton and Condor &c. And the Grant was adjudged void; For that the King was deceived in it, yet in the Caſe of a common Perſon, it had been good. So where Queen Elizabeth being ſeiſed of the Manors of Sapperton and Milborne in Lincolnſhire, granted to one totum illud Manerium de Milborne cum Sapperton. It was held that neither of them paſſed. 1 Rep. 46. a. b.— cites 29 Eliz. & 39 Eliz.

16. *Scire facias* by the Queen to repeal a *Patent* granted to Cotton and his Wife, Anno 35 of her Reign, *reciting that H. and G.* Conjunctim et Diviſim, *were bound in a Bond* of 1000 Marks to the Queen, Anno 31. *which was forfeited*; reciting alſo, That the Queen, by Patent, Anno 33 of her Reign, *had granted* unto Cotton and his Wife, *the ſaid Bond, and the* 1000 *Marks ſo forfeited*; reciting alſo, *That* at the Suit of Cotton in the Queen's Name, *Judgment was given* in the Exchequer, *that the Queen ſhould have Execution for the ſaid* 1000 *Marks*. And to the Intent that Cotton might have the ſaid Bond, the Queen by the ſaid Patent Anno 35 in her Reign, reciting the Judgment obtained in the Exchequer, ex certa Scientia & mero motu &c. granted him the ſaid Bond, and the 1000 Marks, and all the Benefit and Advantage of the ſaid Judgment. In this Grant the Queen was deceived, and the Grant thereby void. 1. becauſe the *Obligation was forfeited at the Time of the Grant*: whereas the Queen *recited that it was (to become forfeited)* 2. Becauſe ſhe recited, *That ſhe had granted the Obligation before before by the Patent of* 33. *whereas in Truth nothing paſſed* by this Patent, *for want of true Recital of the Condition of the Obligation*. 3. Becauſe *the Judgment was given of* 12*d. Coſts and* 12 *d. Damages, as well as of* 1000 *Marks*; whereas *the Grant of totum Beneficium & Advantagium of the Judgment aforeſaid, extends as well to the Coſts and Damages as to the* 1000 *Marks*, which was the principal Debt, and ſo the Queen deceived, which Lord K. Egerton thought was hard in Conſcience, becauſe *the Fault was in the Clerk*, who wrote the Privy Seal, and the Bill ſigned was well; But the Law was with the Queen in Extremity. Mo. 448. pl. 610. Paſch. 38. Eliz. The Queen v. Cotton.

17. The *Queen* was *Tenant pur auter Vie*, and *made a Leaſe for* 40 *Years*; tho' in this Caſe ſhe cannot abſolutely contract for ſuch Leaſe, yet without any Recital or Mention of Eſtate for Life, the Leaſe is good; for the Leaſe for Years is in Judgment of Law leſs than an Eſtate *Pur auter Vie*, and the Queen does no Wrong or Prejudice to any by the Demiſe, and is not deceived in her Grant; for in *Judgment of the Law, this is a Leaſe for* 40 *Years if Ceſty que Vie lives ſo long*. But if ſhe had granted a greater Eſtate than ſhe lawfully might, as an Eſtate Taile, or in Fee, there becauſe ſhe cannot lawfully do it, ſhe was deceived, and by Conſequence her Grant void. 7 Rep. 12. Reſolv'd. Mich. 33, & 34. Eliz. in the Exchequer. Englefield's Caſe. S. C. argued Mo. 303. to 337.

18. The King *ſeiſed of a Manor in Tail Remainder to his Right Heirs, granted* this Manor by Patent to A. *in Fee*, this Patent is void; for the King intended to grant one entire Eſtate in Fee, and not by *Fractions*; firſt for the King's Life, and afterwards to be made void by the Succeſſor, Heir in Tail, and then to be revived again, where the King dies without Iſſue. By all the Judges. Jenk. 251. pl. 42. cites 41 El. 1 Co. 40. b. Alton Wood's Caſe. Judge Jenkins ſays, This is a *hard Caſe*. Where the King is not deceived in the Conſideration, nor in the Eſſence of the Eſtate, and where the King has no Prejudice, but the poſſible Prejudice is to the Patentee, the King's Patent ought not to be avoided. The Grant is good in the Caſe of a Common Perſon. Principis beneficium decet eſſe manſurum. It is for the King's Honour to maintain his Patents, and it is a Diſhonour to him to avoid them by too nice and ſubtle Conſtructions; And frequently it is to the grievous Loſs of the Patentee. Jenk. 251. pl. 42.

19. If the Queen in her Letters Patents *of Preſentation miſtakes her Title*; as if ſhe has Title to preſent in reſpect that ſhe is the *very Patron, and ſhe preſents Ratione Lapſus*; ſuch Preſentation is void; For ſhe is deceived

ceived in her Preſentation. 6 Rep. 29. b. Trin. 44 Eliz. B. R. The third Reſolution in Green's Caſe.

20. The King makes a *Leaſe for* 21 *Years to A.* and afterwards reciting this Leaſe, *grants the Reverſion* of this Land *to B.*——*A.* had ſurrendered his Leaſe before the Sealing of the Second Patent. The Second Patent is void; For the King had not the Reverſion but the Poſſeſſion at the Time of the Sealing the Second Patent; But where the King has the *Reverſion* of Land, or a Manor, *Expectant upon a Leaſe for Years*, made by a Common Perſon, and grants the Land or Manor by Patent by ſuch Words, the Reverſion will paſs; For the Reverſion of the Land or Manor is the Manor or Terra revertens. Jenk. 303. pl. 67.

I. e. 30. Sir Walter Hungerford's Caſe, but not S. P.—*But* if the King *grants* 120 *Acres of his Waſt in D.* and the *ad quod Damnum returns*; that it is not to his Damage, and that the Waſte contains 300 Acres, there nothing paſſes, for it is *uncertain which* 120 *Acres* were intended, and the Party ſhall *not* have any *Election againſt the King*; All which was agreed upon Evidence to the Jury. Noy. 29. Brand. v. Todd.

21. Note the Difference agreed by the Court. If the King *grants* to A. *all the Waſte in D. after an Ad quod Damnum returned*, and that the Waſte contains 120 *Acres*; *yet if it contain* 300 Acres, all paſs; For the Grant is general, and the *Ad quod Damnum* was to enquire of the Damages, and not for the Quantity of the Waſte. Noy. 29. Brand. v. Todd.

22. The King *poſſeſſed of a Chattel* Intereſt in Lands, for a Debt *grants* them *in Fee*. It was reſolved to be void, the King being deceived. 3 Lev. 135. Mich. 35 Car. 2. C. B. Travel. v. Carteret. —— cites 1 Rep. 52. a. and the Caſe of H. 7. there cited; and Mod. 415.

See (O. b.)

(P. b) Where the King ſhall be ſaid to be deceived in his Grant.

1. IF the King ſeiſed of the Advowſon of a Prebend in Fee which is Preſentative, and he grants totam Rectoriam ſive Præbendam noſtram de Itching Abbas in Com. South. cum omnibus Decimis quibuſcunque eidem pertin. &c. Monaſterio de Winton. nuper ſpect. in tam amplis Modo & Forma as the late Abbateſs held it. Tho' the Abbateſs was ſeiſed in Fee of the Advowſon, yet the Advowſon ſhall not paſs by this Grant, but the King is deceived; For he intended to paſs the Rectory and Tithes as a Lay Thing, and not the Advowſon. Hill. 14 Car. This Caſe was referred to the Arbitrement of the Lord Keeper between the Preſentee of the *Lord Marquis of Winchester* and one *Pope* the Preſentee of the King, and he awarded upon hearing of Counſel as a clear Point in Law, that nothing paſſed by this Grant, and ſo the Preſentee of the King obtained the Church and was inſtituted and inducted.

See (Y. a 2) —(M. c)

(Q. b) Grants of the King *falſe Recital.* In what Caſes a falſe Recital ſhall make a Patent void.

S. C. argued. Lane 74 to 79. and Ibid. 108 to 112. the Argu-

1. IF Leſſee for Years of the King makes an Under-leaſe of part of the Land to another, and after dies, and his Wife Executrix takes B. to Baron, who ſurrenders his Term to the King, and after the King reciting the firſt Demiſe, and that the Intereſt thereof is come

come to B. and that he had ſurrendered to us, he demiſes to B. as well in Conſideration of 20 l. paid, as Pro eo quod the ſaid B. ſuper ſe Aſſumpſit to repair the Premiſſes at his own Coſts. This falſe Recital ſhall avoid the Leaſe; For the King intended the whole Eſtate of the firſt Demiſe to be ſurrendered to him, and this was the Cauſe of his Grant. M. 8. Ja. Scacc. between *Sayer and Eaſt.* Dub.

ment of the Barons, 3 of whom held the Grant void, but Snig Baron e contra. 1 Rep. 43. a. in Alton Wood's Caſe.

2. If the King recites, that where by Letters Patents dated &c the Office of the Marſhal of B. R. was granted to J. S. for his Life, and that the ſaid J. had ſurrendered them to him, the which he accepted, in Conſideration of this Surrender the King grants the Office to J. D. for Life. If the Office was not granted to J. S. or if he did not ſurrender the Letters Patents, this new Grant made to J. D. is void; Becauſe thoſe are the Conſiderations of the new Grant. Mich. 13 Car. B. R. between *Sir John Meade* and *Sir John Lenthall.* Reſolved per Curiam on Evidence at the Bar in a Trial for the Office of the Marſhal of B. R. in an Action upon the Caſe, and thereupon Sir John Meade was nonſuited.

3. A Man made *Suggeſtion* to the King, *that he was ſeiſed in Fee*, and *obtained Licence* of the King *to alien in Fee, and to retake for Life*, the *Remainder over in Fee*, where it was found that he who got the Licence had not but for Term of Life; by which it was awarded, that the Land upon Scire facias ſhould be re-ſeiſed, by reaſon that the King was deceived in his Grant; quod nota. Br. Patents, pl. 77. cites 21 Aſſ. 15.

4. Queen Mary, in a Grant by her made of the *Cuſtody of a Caſtle to* D. *recited a Surrender* to her *made* of a former Grant thereof dated *Anno* 33 *H.* 8. when in Truth it was dated *Anno* 32 *H.* 8. Afterwards Queen Elizabeth, Ex ſpeciali gratia, granted the ſaid Office to K. Adjudged, That by Reaſon of this Miſrecital of the Date, the Grant to D. was void notwithſtanding the Act 34 H. 8. and other * Acts of Miſrecital. Nelſ. a. 896 pl. 4. cites Kemp v. Mack-Williams. Dyer 195. 1 Rep. in the Caſe of Alton Woods. S. P.

* It was ſaid, that the Statute 4 & 5 P. & M. 1. of Miſrecitals does not aid Offices, but they are excepted, and ſo Patents of Offices remain as they were at Common Law, and the Truth of this Caſe was, That *the Cuſtody of the Caſtle was an Office of Conſtableſhip of the ſame Caſtle* tho' no Word of it was in the Patent; And at length the Plaintiff, viz. K's Servant was nonſuited. D. 194. b. 195. a. b. pl. 35. Hill. 3 Eliz. Kemp v. Mack-Williams. ——— [But I do not obſerve that any Judgment was given.]

5. One who *had only a Leaſe* of Lands *for* 60 Years, *made a Leaſe* of the ſame Lands *for* 80 *Years*. The Reverſion came to the Crown. The 60 Years expired; The *Leſſee ſurrendered* to the Queen the Indenture, Eſtate and Intereſt, to the Intent ſhe ſhould make a new Leaſe to him for 20 Years, which ſhe did, and in her Grant ſhe recited the Leaſe for 80 Years, and that in Conſideration of a Surrender thereof, and for divers other good Conſiderations, ſhe Ex certa Scientia &c. demiſed the ſame for twenty Years rendering the ancient Rent. It was held by Wray, Southcot, and Manwood, that the Demiſe was void; Becauſe the Queen was deceived. But Dyer held e contra; Becauſe there is no Suggeſtion or Information but a Conſideration, which tho' it be falſe is yet nothing to the Purpoſe. D. 252. pl. 26. Trin. 18 Eliz. Anon. cites Fitzh. 27 H. 8. and Br. Patents, 37 H. 8.

6. King H. 8. Ex certa Scientia, and *in Conſideration of* 300 *l.* granted all thoſe *Meſſuages in the Tenure of B.* and lying *in the Pariſh of D.* when in Truth they did not lie there, but in the Pariſh of S. It was adjudged, that tho' the Meſſuages were in the Tenure of B. yet becauſe by the Grant they were *reſtrained to a particular Place* where they were not, and there was no other convenient Certainty to fix the Premiſſes, therefore the Grant was void. 2 Rep. 32. b. Mich. 36 & 37 Eliz. Doddington's Caſe.

Cro. E. 368. Hall v. Combes.

The Caſe was, H. 8. was Tenant in Tail to him, and the Heirs Male of his Body, and afterwards the *Reverſion came to the Crown by the Attainder of the Reverſioner*,

7. *King H.* 8. being *Tenant in Tail* of the Manor of Abbotesly, *granted* it *to* his Servant *Walter Welſh*, *and to Elizabeth his Wife*, *and to the Heirs of the Body of the ſaid Walter*, and in the Patent it was recited, that the King was ſeiſed of the ſaid Manor in Fee; and upon Demurrer it was inſiſted, That this Grant was void, or if not, it was good only during the Life of the King; Becauſe, he having only an Eſtate-Tail himſelf, could grant only for his own Life; For he could not grant a greater Eſtate than he had, ſo that being Non Informatus, or Mis-informatus of his Eſtate, he was deceived in granting it. Nelſ. a. 898. pl. 25. cites Moor 413. Welſh's Caſe.

and it was enacted by Parliament, that H. 8. ſhould have the ſaid Manor, and ſhould be adjudged thereof ſeiſed to him, his Heirs, and Succeſſors in Fee ſimple, Saving to all Perſons, Except the Reverſioner and his Heirs, all Rights &c. It was argued, that tho' the King had the Reverſion in Fee at the Time of the Grant, yet the *Patent to W.* ſhould not *enure firſt upon the King's Eſtate for Life*, *and then to be void againſt the Iſſue*, *and to be good again after the Failure of Iſſue*; becauſe ſuch Operation of the Grant imports in part Grant of the Reverſion which the King had, and ſo there ought to have been a Recital of the Eſtate in Poſſeſſion which there is not, and that the Saving no ways betters the Caſe, but the Grant muſt be conſidered as it was at the time of the making, when the King was *Tenant in Tail* with *Reverſion expectant in Fee* to him. And that *Fractions of Eſtates cannot be in Grants of the King*, viz. that the Grantee ſhall have for a Time, and then the King, and then the Grantee again. But afterwards, upon arguing the Caſe by the Barons in 38 & 39 Eliz. Ewens and Periam Ch. B. were againſt the Queen [and for the Grantee] in omnibus; and Clarke B. in omnibus with the Queen. Nota, that Periam ſaid, That if Tenant in Tail be, Remainder in Tail, Remainder to the Queen: and Tenant in Tail does Treaſon, and the Queen makes Leaſe, and then Tenant in Tail dies without Iſſue, and afterwards he in Remainder dies without Iſſue, the Leaſe ſhall continue good upon the Reverſion. Mo. 413. pl. 570. Mich. 37 & 38 Eliz. Welſh's Caſe.

8. The *Prior* of W. being *ſeiſed of the Rectory* of L. *leaſed the Tithe-Corn and Hay* for Years, *reſerving* 4 *l. Rent*, *and the Leſſor to pay* 3 *s.* 4 *d. per Annum for bringing the Rent to the Priory*; The Priory coming by meſne Deſcents to *the Queen* after the Statute of Diſſolutions &c. ſhe *leaſed the Rectory*, *and all the Glebe with the Appurtenances uſually let with the ſame* heretofore, *under the yearly Rent of* 3 *l.* 16 *s.* 8 *d.* to hold the Premiſſes under the ſaid yearly Rent of 3 l. 16 s. 8 d. It was adjudged, That the Leaſe made by the Queen was void, becauſe ſhe was deceived in the Conſideration; For ſhe intended to leaſe no more than what the Prior had leaſed before, and to have the ſame Rent which he had: Now the Prior leaſed only the Tithe-Corn, and Hay, and had 4 l. per Annum; for *the* 3 *s.* 4 *d. was not to be deducted out of the Rent*, *but paid by way of Covenant*; whereas the Queen had but 3 l. 16 s. 8 d. for the whole Rectory, ſo that it is plain ſhe was deceived in the Recital. Yelv. 42. 47. Hill. 1. & Trin. 2 Jac. B. R. Chambers v. Maſon.

9. King H. 7. *granted the Manor of B.* to G. B. *in Tail* Male, *and after by another Patent*, *reciting the former*, *and that in Conſideration of the Surrender thereof Virtute cujus he was ſeiſed in Fee*, he de Gratia ſpeciali, certa Scientia & Mero Motu *re-granted* the ſaid Manor to the ſaid G. B. and J. his Wife, and *to the Heirs of the ſaid G. B.*. It was reſolved, That the Recital of the Eſtate Tail, and that the Patentee had ſurrendered or delivered the ſaid Letters Patents to the Chancellor to be cancelled were both in Judgment of Law the Information and Suggeſtion of the Party; But the Clauſe of (Virtute cujus he was ſeiſed in his Demeſne as of Fee) was only the Collection of the King himſelf as a Conſequence upon the Surrender, in which the King miſtook the Law. 6 Rep. 55. b. Trin. 4 Jac. Lord Chandois's Caſe.

10. *Alſo* the Party informed the King, *That he had delivered his Patents to the Chancellor to be cancelled*, whereupon *the King affirmed*, *(quæ quidem Literæ Patentes adtunc & ibidem cancellatæ fuerunt)* This is not the Information of the Party, but the *Affirmation of the King*; And the Collection or Affirmation of the King *upon the Information of the Party when it is not any Parcel of the Conſideration ſhall not avoid his Grant*; For all that the Party had informed was true, and the Error was in the Conſe-

Conſequence or Inference made by the King upon it; Therefore in as much as the Party had truly informed the King of the Eſtate Tail, and of the Delivery of the Patent to be cancelled, tho' the King had miſtaken the Law or the Matter in Fact, yet this being no Part of the Conſideration ſhall not avoid the Grant; For *no Default was in the Party*. 6 Rep. 55 b. Trin. 4 Jac. Lord Chando's Caſe.

11. By Letters Patent the *King granted Omnes illas Pecias Terræ* vocat' B. and C. exiſt' in Man' de D. nuper inTenura J. S. *Quæ quidem omnia Præmiſſa a nobis &c. Concelata & Detenta* fuerunt, & Redditus &c. inde non reſponſa, Habendum &c. In Ejectment *it was found, that the Manor of D. of which the Premiſſes in Queſtion were Parcel, Non Concelat'* nec Detent' fuit, ſed fuit in Onere & Compoto, *and that the Rents &c. of the ſaid Manors (except of the Premiſſes in Queſtion) were anſwered* to the King. It was reſolved, That the Grant was void for the falſe Recital; For the Manor itſelf being in Charge to the King, the Premiſſes which are part of it cannot be ſaid to be concealed or detained from the King, tho' in Fact they were in the Poſſeſſion of an Intruder, who anſwered nothing for them; Nor can any Land, of which the King is ſeiſed, be ſaid in Law to be detained from him. And therefore the Recital of the Quæ quidem &c. which is to be conſidered as the Suggeſtion of the Patentee, being falſe, the Grant is void, and cannot be aided by the particular Deſcription or Certainty of the Lands granted, nor by the Words, Ex Certa Scientia &c. 10 Rep. 109. Mich. 10 Jac. C. B. Legat's Caſe.

12. The Queen *granted an Houſe* and Lands in Fingergoe in Eſſex *to* one *T. S. who ſurrendered the ſame* to the Queen, and ſhe made a *new Leaſe* of them to him in this Manner: viz. Whereas T. S. hath ſurrendered his Eſtate in *Fingergoe in Suſſex* &c. in Conſideration thereof I grant to him the Houſe and Lands in Fingergoe in *Eſſex*; It was objected, That there was no good Conſideration for the new Leaſe and that the Queen was deceived, for it is in Conſideration of his Surrender of his Eſtate in Fingergoe in *Suſſex*, whereas there is no ſuch Place there but inEſſex: Sed per Coke and Doderidge, The Leaſe is good, for the Statute 43 *Eliz. cap.* 1. enacts, That Letters Patents ſhall be good notwithſtanding any Miſnoſmer of the Town or County, and this *is but a miſnaming of the County*, and not any material Miſtake. 1 Roll. Rep. 23. Paſch. 12 Jac. B. R. Godfrey v. Sparrow.

13. By a Deed dated 10 *May*, Anno 31. the *Parſonage of H. was granted by S. to H.* 8. and on the *21ſt July following* the *King granted the Parſonage of D.* to the ſaid S. and his Heirs, *in Conſideration of the Parſonage of H.* to him granted, not ſaying if granted by Deed or How. Afterwards, viz. *on the* 26 *July the Deed was* acknowledged by S. and *inrolled* Secundum Formam Statuti; Hobart Ch. J. held, that tho' the Conſideration expreſſed in the King's Grant was falſe, for that the *Rectory was not granted* to him *till the Deed was inrolled*, which was after his Grant to S. yet his Grant ſhall be good; for the King is not deceived at all in Effect; For he has the Parſonage of H. and that by the Grant of S. which was made before the King's Grant, and muſt be ſo pleaded as made 10 May. And tho' it be true that it was not compleat for want of Inrolment at the time of the King's Grant, yet *when the Inrolment came, it takes its Effect*, not from the Inrolment nor by it, but from and *by the firſt Act*; And therefore between the Parties it ſhall bind to all Purpoſes ab Initio, tho' this be in a collateral Reſpect. Hob. 221, 222. Needler v. Biſhop of Wincheſter.

14. Queen Elizabeth, *Anno* 19 of her Reign, *granted* the *Office of Clerk of the Council of the Marches of Wales to A. for Life*; and by another Grant *Anno* 25 of her Reign *ſhe granted to the ſame A. the Office of Secretary there*; *King James* Anno 1, without *reciting theſe* former *Grants* made as aforeſaid, *granted the ſame Offices to the ſame A.* for Life; Afterwards King

King James, *Anno* 9, of his Reign, *by another Patent, reciting the Patent of Anno* 1, *granted theſe Offices to J. S. for Life, when* ever they ſhould be *void by the Death, Surrender, or Forfeiture of the Queen's Patentee*; Afterwards by another Grant, *Anno* 14, *reciting both the void Grants made by himſelf, but omitting the good Grants made by the Queen*, he *granted the ſaid Offices to W. U. and J. M. for their Lives, after the Death, Forfeiture, or Surrender of A.* who was ſtill living, *and of J. S.* Cum poſt Mortem, Surrender, Forfeiture &c. of the ſaid A. or J. S. Non Obſtante Male recitando &c. and *Non Obſtante Non recitando aliquod Donum &c. præantea factum de Officiis prædictis*; Adjudged, that the Grants of 1 & 9 Jac. are void; Becauſe the laſt recited thoſe Grants which were void, and the firſt omitted thoſe which were good, and that ſuch falſe Recitals, or falſe Suggeſtions ſhall not be helped by the Non Obſtante in the laſt Grant; Per omnes Juſticiarios præter Hide Ch. J. who held clearly the contrary; and Jones J. who ſeemed to doubt thereof. And the other Juſtices held further, That theſe are not properly Miſrecitals or falſe Recitals but falſe Informations whereby the King was deceived; For by Intendment the King conceived thoſe Grants to be good which were void, and granted thoſe Offices after Determination of thoſe Grants Vel alio quocunque Modo &c. ſo the King is deceived, and the *Non Obſtante ſhall not aid ſuch falſe Informations* and falſe Suggeſtions. But there was not any Certificate made of theſe Judges Opinions, becauſe the Parties compounded. Cro. C. 197. Trin. 6 Car. B. R. Ld. Brook v. Ld. Goring.

In arguing this Caſe by the Judges, theſe Diverſities were taken in the Conſtruction of Grants.

15. The King granted the *Advowſon of the Church of L. lately belonging to the Archbiſhop of Canterbury*, Whereas *the Archbiſhop of Canterbury never had it.* Adjudged that the Church being particularly named, and the King not being deceived either in the Title or Value, the Grant is good enough. Freem. Rep. 178. pl. 190. Mich. 1674. The King v. Sir Francis Clarke and the Biſhop of Rocheſter.

1ſt. *Where there are only general Words, with the Pronoun Illa, As Omnia illa* &c. there *all the ſubſequent Deſcriptions muſt be true*, or elſe the Grant will be void as well in the Caſe of the King as of a common Perſon. 2dly. Where the *Thing is named by a particular Name that doth ſufficiently aſcertain it, tho' the ſubſequent Deſcriptions are falſe*, yet the Grant is good enough in the Caſe of the King or a common Perſon; only *with this Difference*, viz. if it *appears* either *that the King was deceived* in his Title, or in the Value of the Thing, or in any Thing relating to his Profit, the Grant is void againſt the King. Freem. Rep. 178. in S. C.——S. C. adjudged 1 Mod. 195. Hill. 26 & 27 Car. 2. C. B. And in the Argument thereof a Difference was taken, when the King *miſtakes his Title to the Prejudice of his Tenure or Profit*; and when he is miſtaken *only in ſome Deſcription of his Grant, which is but ſupplemental, and not material nor iſſuable.*——S. C. cited by Holt Ch. J. Skin. 663.

16. If the King grants the *Manor* of Dale *of* 5 *l.* per Ann. Value to A. *where it is of the Value of* 10 *l. per Ann.* the Patent is void for the Value *in the ſame Sentence* with the Grant; but if the Value be mentioned in another Sentence, and not in the Grant, the Grant is good. Utile per inutile non Vitiatur. Jenk. 261. pl. 60. cites Cro. J. 34.

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(Q. b. 2) Grants of the King. *Recital* of Leaſes [and Grants.] In what Caſes a Recital is *neceſſary*.

Leaſes of Record ought to be recited *where the King grants the Reverſion*, but not

1. **If the King grants any Land, or &c. which is in Leaſe for Life, or Years, and does not recite it in the Letters Patents, if the** Leaſe be not of Record, **the Grant is good, notwithſtanding the Non-recital of the Leaſe. In Time of H. 8. and E. 6. Br. Patents** 93. **Co.** 6. *Lord Shandois* 56.

Leaſes not of Record; for the Subject has not proper Means to come to the Knowledge of them. A *Non Obſtante* in the Patent helps the Non-recital of Leaſes of Record. Jenk. 303. pl. 77.

2. As

2. As if Land in Leaſe comes to the King by the Attainder of him who is ſeiſed of the Reverſion, or by the Diſſolution of an Abbey, **the Grant of the King of the Land, without Recital of the Leaſe made by him who was attainted, or of the Abbot, is good; becauſe thoſe Leaſes are not of Record. In Time of H. 8. E. 6. Br. Patentees 93. Co. 6. *Lord Shandois* 56. in Caſe of a Reverſion expectant upon an Eſtate Tail created by him who was attainted. D. 6. 7. El. 233. 10. 11. Where the Prior of Wells leaſed for Life the Demeſnes of a Manor, and after the Manor came to the King by the Diſſolution of the Priory, and he granted the Manor without Recital of the Leaſe, and yet good, and the** Reverſion of the Demeſnes ſhall paſs by * Name of the Manor only.

* S. P. For this Word (Manor) includes all Eſtates and Degrees of Eſtates of or in the Manor. 6 Rep. 56. a. Trin. 4 Jac. The Lord Chandos Caſe.

3. **If the King grants an** Office **for Life, he cannot after grant** the Reverſion **of this Office without a ſpecial Recital of the Eſtate for Life; but it is void. Co. 8. Earl of *Rutland* 56. b.**

So where a *Subject has an Office in Fee*, and *grants it to A. for Life*, and afterwards grants *the Reverſion to the King in Fee*, if the *King grants this Office in Fee to B.* without reciting the Grant to A. altho' it is not of Record, the Grant to B. is void; for the Grant of an Office has Reference to the Exerciſe of it in Preſenti, and another had the Poſſeſſion and Exerciſe of this Office at the Time of the King's ſaid Grant to B. Jenk. 303. pl. 77.

4. **If the** King leaſes Land **to another,** and after makes a new Leaſe to the ſame Party, **this is void, without Recital of the firſt Leaſe, tho' the Acceptance of this ſecond Leaſe * operates as a Surrender in an Inſtant... between *Harris and Wing* adjudged, cited and agreed H. 38. El. B. R. in *Haleſwell and Aylesworthie's* Caſe. Vide the Caſe of Harris and Wing argued. P. 32. El. B. R. Mich. 5 Ja. in Scacc. per Curiam.**

Cro. E. 231. S. C. For tho' by the taking the ſecond Leaſe, the firſt was drowned, yet at the inſtant Time of the taking of the ſecond Leaſe, it was in Eſſe, and therefore ought to have been recited, eſpecially being a *Leaſe upon Record*; *but* of a Leaſe *by Matter in Fact*, they agreed *there* need *be no Recital*.——S. C. cited as adjudged. Mo. 415. in Welſh's Caſe.——3 Le. 242 to 251. Mich. 32 Eliz. S. C. adjudged.——* S. C. cited Cro. C. 198. Contra, that it was held to be no Surrender of the former Leaſe.

5. **If the** King preſents his Clerk **to a Benefice,** and after preſents another, **without Mention of the firſt Preſentation, this ſecond Preſentation is good, without any Recital of the firſt; for the** firſt is revoked in Law by the ſecond **Preſentment, without Mention of the firſt. Mich. 8 Ja. Scacc. Hill. 8 Ja. between * *Calvert and Kitchin* adjudged; for the firſt Preſentee had not any Eſtate nor Intereſt in the Church nor at Will by the Preſentment. Dub. D. 16 El. 327. 4. 17 El. 339. 47. But there adjudged void, becauſe it was obtained † pending a Quare Impedit, in Deceit of the King.**

See (O. b) pl. 3 ——— * S. C. Lane 71. & 100. and Ibid. 102. Altham Baron, cited 38 E. 3. 3. 4. by which it appears that a ſecond Preſentation made by the King was good, without a Repeal of the firſt; and that by Gaſcoign 7 H. 4. 32. if the King makes a Preſentation to one, and then preſents another, without Recital or Repeal of the firſt, yet the Biſhop ought to receive the later Preſentee; for it is good without actual Repeal.——† S. P. 6 Rep. 29. b. Trin. 44 Eliz. in Green's Caſe.

6. The King grants *a Copyhold by Letters Patents*; it need not be recited that it *was Copyhold*. Per Newdigate J. 2 Sid. 139. Hill. 1658. in Caſe of Field v. Boothby.

7. If the King *grants an Office to W. N. for Term of Life*, and *after grants the ſame Office to a Stranger*, the firſt Patentee dies, yet the ſecond Grant is void; becauſe the firſt Grant was not rehearſed in the ſecond Patent. Per Keble, for Law. Br. Patents, pl. 54. cites 6 H. 7. 14.

8. 6 *H.* 8. 15. *If any make Suit to the King for Lands, Offices, or other Things formerly granted to any Perſon during the King's Pleaſure, the firſt Patentee being ſtill in Life, the laſt Grantee ſhall expreſs, in his Petition or Patent, the former Patent, and the Determination of his Pleaſure concerning the ſame, otherwiſe the laſt Grant ſhall be void.*

This Law was made on Purpoſe that the King might not be deceived in his Grant.

Arg. 4 Mod. 277. in Caſe of the King v. Kemp.——If the King grants to me *to be Surveyor of his Manors at B. and to take Timber for the Buildings of the King, durante beneplacito*; and the King grants after *the like Grant to another, not making Mention of the firſt Patent* juxta formam Statuti &c. Yet the laſt Patent is good; becauſe *no Fee nor Profit is granted* by the firſt Patent; as if a Man had granted to me that I ſhould carry his Wood, and after grants the like Grant to another &c. Br. Patents, pl. 2. cites 27 H. 8. 28.

King Charles I. by Letters Patents *granted to P. the Office of Under-ſearcher, Durante beneplacito noſtro.* Afterwards Cha. 2. ſends his *Privy Signet, to confirm the ſaid P. in his Place*, and *afterwards grants the ſame Place to F. by Patent, without taking Notice of the Patent to P.* The Queſtion was, Whether this ſecond Patent was void by the Statute 6 *H.* 8. *cap.* 15. The Lord Chancellor, Windham, and Rainsford inclined that the Patent was determined, and the Scire facias to be quaſh'd without better Cauſe ſhewn. Freem. Rep. 70. Hill. 1672. in Canc. The King v. Foſter.

S P. And if the King Tenant in Tail makes a Leaſe for Years, his Succeſſor may avoid it,

9. If the *King Tenant in Tail makes a Leaſe for Years, or* for *Life*, and dies, the *Heir may make another Grant without reciting them*; for they are void by the Death of the King Tenant in Tail who granted; and ſuch Grant is no Diſcontinuance without Warranty; for the King upon his Grant does not make Livery. Br. Patents, pl. 101. cites 38 H. 8. and alſo 37 H. 8. S. P. between the King and Sir Anthony Lee.

or if he will he may accept the Rent reſerved, and ſo affirm the Leaſe; and when ſuch Succeſſor grants theſe Lands, he need not recite the void Leaſe; for tho' it be by Patent of Record, it is null. If the Succeſſor accepts the Rent reſerved by the King Tenant in Tail, a Recital of this, or a Non Obſtante that it is not recited, is neceſſary; but where Leaſes are made by common Perſons, and the Reverſion comes to the King, the King's Grant of this Reverſion, without any Recital or Non Obſtante, is good; for the Perſon who purchaſes ſuch Reverſion from the King, has no Means to know whether there be ſuch Leaſes or not; for they were made in the Country, and are not of Record. Jenk. 204. pl. 28. cites S. C.

But where his ſecond Grant implies a Grant

10. The King in his Grant need not recite his *own Eſtate*. Per Periam Ch. B. 1. Rep. 48. a. b. Trin. 42 Eliz. in Altonwood's Caſe.

in Poſſeſſion, which cannot be by Reaſon of a former Grant in Poſſeſſion, the ſecond Grant muſt recite the firſt, or is void by the Reaſon of the Common Law. 1 Rep. 50. in Altonwood's Caſe.

See (I. c. 2) pl. 3.

(R. b.) What ſhall be a *ſufficient* Recital of Leaſes; and *What Things will ſupply* the Recital of them.

Br. Patents, pl. 93. ſays, that this was granted to be Law in Time of H. 8. in Sir Thomas Inglefield's Caſe; and that it ſeems to him to be ſo.

1. **If the King recites, that** where J. S. holds for his Life of his Grant, he grants the Reverſion to J. N. **this is good Recital of the Leaſe,** without Mention of the Letters Patents, or Date **of them; for the King is not deceived, inaſmuch as he takes Notice upon him of the former Intereſt for Life.** 37 H. 6. 37. b. **Per Danby. In Time of H. 8. Br. Patentees** 96. **Sir** *Thomas Englefield's* **Caſe.**

For *it is ſufficient in Pleading to ſay that the King, reciting how he leaſed to W. N. for Life, has granted to A. B. the Reverſion*; per Danby Juſtice, and the Court in a Manner agreed to it: And therefore it ſeems that if the King *miſrecites the Date of the firſt Letters Patents*, or the like, *yet if he well recites the Eſtate, and the Thing, and the Name of the Leſſee*, that then the Grant of the Reverſion is good; for where the King *takes Notice of his Tenant for Life, and of his Eſtate*, and grants the Reverſion, he is not deceived in his Grant; for he takes upon him Notice of the former Intereſt for Life; and then the Date of the firſt Patent is not material. Br. Patents, pl. 96. cites 38 H. 6. 37.

2. **If the King** recites a former Leaſe for Life made by himſelf by Letters Patents, bearing Date &c. **and** miſtakes the Date, and then grants the Reverſion, **yet this will not make the Grant void, inaſmuch as the King takes Notice of the State, and the Date is not material.** 38 H. 6. 37. b. **Per Danby, Time of H. 8. Br. Patentees** 96.

3. **If the King** grants Land, which is in Leaſe of Record, without Recital of the Leaſe, **but with theſe Words,** Notwithſtanding that it be in Leaſe for Life or Years of Record or otherwiſe; **this is a good Grant, and ſhall paſs the Reverſion; for the King is not deceived,**

and

and diverſe Inconveniences will ariſe by the Recital of the Leaſes. Co. 4. *Bozoun.* 35. b. Reſolved.

4. So if Land be in Leaſe of Record, and the King without Recital of the Leaſe grants the Land, and further grants the Reverſion thereof depending, or expectant upon any Eſtate for Life or for Years; the Grant is good for the Cauſe aforeſaid. Co. 4. *Bozoun.* 35. b. Reſolved.

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5. 34 & 35. *H.* 8. *cap.* 21. Enacts, That *all Letters Patents, and Grants made by the King ſince the 4th of February, or which ſhall be hereafter made by him within ſeven Years next after the making of this Act, ſhall be good notwithſtanding any Miſ-naming, Miſ-recital, Non-recital, Not finding of Offices, Miſ-recital or Non-recital of Leaſes, Uncertainly Miſcaſting, Rating, or ſetting forth of the yearly Values, or Rate of the Things granted, or of the yearly Rents thereof, Want of Attornment, and Livery of Seiſin, or of the miſnaming of the Places where the Things Granted do lie, or of the Tenants or Farmers of them, or any of them.*

Provided alſo, That this Act ſhall not extend to revive any Letters Patents, or any Office granted by the King, which have been made void by Authority of Parliament, Judgment, Decree, or any otherwiſe.

This Act ſhall not be prejudicial to any Letters Patents, Indentures, or Writings made after the 4th of February, in the 27th Year of his Reign, and before the 28th of April, in the 28th Year of the King's Reign, or to any other Statute made for the Corroboration of ſuch Letters Patents, Indentures, or Writings.

6. 1 E. 6. *cap.* 8. *Such another Statute made for the Confirmation of all Grants made, and to be made by E.* 6. *from the 28th of January, in the firſt Year of his Reign, and ſo during his Life, with ſuch Proviſoes and Limitations as in the former Act of* 34 & 35 *H.* 8. *are contained. See the Statute.*

The *Abbot* of W. with Conſent of his Covent 21 H. 8. *leaſed Land*, of which the Abbot was ſeiſed in Fee, to Sir T. *More, who was afterwards attainted* of Treaſon, and the Leaſe thereby forfeited, and *the King* poſſeſſed &c. and he being ſo poſſeſſed, the Abby and Reverſion came to

the King and his Heirs, who *after the 32d of H.* 8 *made a Leaſe to R. for twenty-one Years; the Reverſion deſcended to E.* 6 *who leaſed to P. Habendum, after the Term of the ſaid Sir T. More ended, for* 21 *Years.* Afterwards *R. ſurrendered his Term, and took a new Leaſe for* 30 *Years*; Adjudged, That P's Leaſe was void, and not confirmed by any Statute; becauſe the Term made to Sir T. More was ended before P's Leaſe was made, and then the Leaſe of the King as to the Commencement has not any Senſe and the Statute of Miſ-recital and Non-recital *extends only when Leaſes in Eſſe are miſ-recited, or not recited and not when the King intends a Leaſe to continue, which is ended* and determined. And. 6. pl. 12. Paſch. 2. Eliz. Holt v. Roper. —Bendl. 84. pl. 129. S. C. and that the ſaid Leaſe made to Sir T. More was long before extinct, in the Poſſeſſion of King H. 8. by *Unity of Poſſeſſion of the ſaid Term and Reverſion*; and ſo the Leaſe made by E. 6. cannot commence immediately after the Surrender of the Leaſe of R. Becauſe the Words of the Commencement of this Leaſe will not ſerve it, and thereupon the Parties agreed. The Reporter ſays he was of Counſel with the Defendant; and that the Opinion of divers of the Juſtices of C. B. was with the Defendant as above. [But mentions nothing of any Judgment given]—3 Le. 5. pl. 14. S. C. ſays the Leaſe to P. was adjudged utterly void, for that the King was deceived in his Grant, and not helped by the Statute of 1 E. 6. cap. 8. — S. C. cited. Arg. 4. Mod. 276.

E. 6. *ſeiſed in Fee of the 9th Sheaf of Corn in E. as Parcel of the Poſſeſſions of the Abby of L. in the County of York*, by Patent under the Great Seal in 7 E. 6. *granted to W. R. & W. S.* and their Heirs, *totam illam Medietatem nonæ Garbæ Bladorum & Granorum vocat. the Ninth Sheaf de & in E. in Com. Eborum*, modo & nuper *in Tenura* ſive Occupatione *W. W.* ac nuper Monaſterio L. in Com. Eborum diſſolut. ſpectant. By this Patent the *Plaintiff claimed the Intire 9th Sheaf*; for in truth *all was in the Tenure of W. W.* by a Leaſe made 36 H. 8. reſerving Rent, *but E. was in the County of L. and not of York.* The Queſtion was, whether the Intire ninth Sheaf paſſed by reaſon of the Statute of Miſ-recital made 7 E. 6. For as to the *Miſpriſion of the County* where E. lay, it *was* agreed on both Sides to be *not material*, it being helped by the Statute, and ſo held Popham & Clench J. in the Abſence of the other Juſtices; But Popham ſaid, That the Patent could not convey more than the Moiety, if it could convey that; For the Makers of the Statute intended not to aid a Grant, in which the King was deceived. As if the King grants the Moiety of two Acres, it is not reaſonable to conſtrue the Patent to paſs 2 Acres; And that is the *Difference* as to the *Quantity where the Certainty is plain*; *As* where the King *grants two Acres called the Manor of D. whereas the Manor contains* 100 *Acres*, it is a good Grant of all the Manor, and all the Acres; *But* if he had granted *all his Manor of D. containing* 100 *Acres, whereas it contained* 20 *Acres.* Nothing had paſſed by Common Law, but it is aided by the Statute. There is *alſo* a Difference *as to the Quality and Nature of the Thing*; As where H. 8. granted to Sir T. More *Totam Turburiam ſuam in D.* where a former Patentee, having ſuch a Grant, had before *converted Part thereof into Arable and Part into Paſture*; Sir T. More ſhould have only that which was then Turbary, and the Statute does not remedy ſuch a Grant; For Turbary is a Profit parnable, which may be in one Place and not in another after Converſion; *But*, had it been *a great Moor*, and after ſuch Converſion the King had granted *Totam Moram ſuam*, it had been otherwiſe; For that it is provided for by the Statute; And if he had *granted all his*

his Eſtovers in ſuch a Wood, whereas he had not any Eſtovers in the ſaid Wood, but a Coppice only therein, he was not aided by the Statute; And Judgment accordingly for the Plaintiff, with the Aſſent of Clench J. Cæteris Juſticiariis abſentibus Cro. E. 632. Mich. 40 & 41 Eliz. B. R. Brownlow v. Farr.

Non-Recitals of Eſtates Tail are not aided by this Statute; But if Tenant in

7. 4 & 5. *p. & M.* 1. *Another like Act made for the Confirmation of all Grants made, and to be made, to or by the Queen, or to the King and Queen, from the firſt of July in the firſt of her Reign, and ſo during her Life with ſuch Proviſoes and Limitations as in the ſaid former Acts of H.* 8. *and E.* 6. *are contained.*

Fee Simple was attainted, and the Queen, after the Death of the Party attainted, had granted the Land, no Office being found, this ſhould have been confirmed by this Statute, and the Patent which was void, ſhould have been made good thereby. 2 And. 35 Anon.

*The Maſter and Fellows of Magd. Coll. 15 Eliz. by Indenture

8. 13 *El.* 2. *Another like Confirmation of all Grants * made to for and by the Queen, or to be ſo made within ſeven Years next after the End of this Seſſion, with like Proviſoes and Limitations, as in the former Statutes.*

inrolled, granted to the Queen an Houſe in Fee, rendring 15 s. Rent, upon Condition; That ſhe, before 1 Apr. ſhould convey to B. Spinola, a Denizen, and his Heirs. She granted accordingly. It was reſolved, That this Statute of 18 Eliz cap. . has not given any Vigor or Effect to the ſaid Grant made to the Queen, contrary to the Statute of 13 Eliz. cap. 10. which makes void all ſuch Leaſes, Gifts, &c. but that after this Act of the 18th. the Grant remains of the ſame Force as it was before this Act; For it is out of the Letter of this Act which eſtabliſhes ſuch Conveyances only as are made for Satisfaction of Debts, and Sums of Money, or other good Conſideratoin, which Words in the Preamble are connected to the Body of the Act: For immediately after the ſame Words the Statute ſays (for the better Aſſurance &c. whereof be it enacted) and therefore tho' the Words in the Body of the Act are (for any Debt, Sums of Money, or other Conſideration whatſoever) leaving out (good) before the Word (Conſideration) And ſince the ſaid Grant was not for any Debt, Sum, of Money, or other good Conſideration it was out of the Letter of the ſaid Act, nor did ſhe ever pay the ſaid Rent; for ſhe granted it over before the Day of Payment, and beſides the Want of good Conſideration, there was alſo fraudulent Practice; But admitting there was good Conſideration, yet this Statute of the 18th extended not to it; For there are 5 *Diſabilities whereby Conveyances to the Queen may be impeached.* 1ſt. In reſpect of the Perſon of the Grantor, and that by the Common Law, and abſolutely, as Infants, Monks, or Secundum quid, and not ſimliciter, as Ideot, Non-compos, Feme Covert, unleſs by Fine and Recovery &c. or by the Statute, as Deans, &c. by 13 Eliz. & Archbiſhops &c. by 1 Jac. cap. 3. 2dly, By reaſon of the Nature of the Thing granted; As if Donee in Tail holds of his Donor by Fealty, and the Donor by Deed inrolled, grants the Fealty to the King, it is merely void; becauſe it is an Incident inſeparable to the Reverſion; So of Grants of Founderſhip by the Founder. 3dly, In reſpect of the Eſtate of the Grantee, as if Tenant in Tail of Land by Deed inroll'd, grants it to the Queen by Deed inrolled in Fee, this will not bind his Iſſue. 4thly, In reſpect of the Manner of the Grant, as if one ſeiſed in Fee of Land grants it after his Death to the Queen her Heirs and Succeſſors &c. which have no legal Foundation, and are againſt the Rules of Law. 5thly, In reſpect of Omiſſion of any Circumſtance requiſite by Law, but having firm Commencement; As if, in Satisfaction of a Debt, or for Money, or other good Conſideration, he Grants to the Queen, her Heirs and Succeſſors, and this Deed never was inroll'd. 11 Rep. 66. b. 76. a. &c. Paſch. 13. Jac. Magd. Coll. Caſe. —— But the Reporter, pag. 77. b. 78. tells the Reader, That there is a *Difference* between a *General Act*, viz. (by or from any Perſon or Perſons, Bodies Politick, or Corporate) as the ſaid Act of 18 Eliz. is, and an *Act which ſpecifies particular Kinds of Bodies Politick and Corporate*; As the Statute of E. 6. cap 14. of Chantries, which enacts, That every Gift &c. made to the late King, his Heirs &c. or to the now King, his Heirs &c. by any Archbiſhop, Biſhop &c. of any Manors &c. to the ſaid Archbiſhop &c. belonging, ſhall be good and effectual in the Law, to all Intents and Purpoſes; And the Reporter ſays, That if *Tenant in Tail grants* his Land *to the Queen*, ſuch Grant is good againſt the Iſſue by the Statute 18 Eliz. For the Perſon of the Tenant in Tail is able, and he has Power upon the Land; and that ſo in **Vaughan's Caſe**, Mich. 32. & 33. Eliz. B. R. *But* if *Baron and Feme* by Deed grant the Land of the Feme to the Queen, this is not made good by the ſaid Act, to bind the Feme after the Coverture, or her Heirs; For there the Perſon of the Feme Covert is diſabled to convey her Land, unleſs by Fine upon due Examination, and ſo alſo was it held in Vaughan's Caſe. —— There is a Note in Cro. J. 364. Hill. 12. Jac. B. R. where the laſt above-mentioned Diſtinction is ſaid by Coke upon the Argument of Warren and Smith's Caſe, to have been adjudged in 30. Eliz. in **Bawd's Caſe**. [But this ſeems to be meant Vaughan's Caſe, and only miſprinted; But for the better explaining the Difference, obſerve the Diverſity taken by Lord Coke, as above, between the two Statutes of 1. E 6. cap. 14. and this of 18 Eliz. cap. 2. the above Diſtinction holding in the one Caſe, but not in the other.]---This Statute extends only to make good *Imperfections in Circumſtances and not in Subſtance*, which is the Reaſon that it makes not good a Leaſe to the King by an Infant. Arg Le. 334. pl. 467.

The Queen was ſeiſed of the Scite and Demeſnes of a Priory of the annual Value of

Provided, That all Patentees, who have ſince Nov. 18. *or ſhall, during the Space of ſeven Years, purchaſe or get of the Queen any Manors &c. which, at the making of Patents, were, or ſhall be of more yearly Value to the Queen, and ſo anſwered in yearly Rent, or Ferme, than ſpecified in any ſuch Patents,*

or in the Particulars, or Rate thereof, made by any Auditor-Surveyor, or Officer; then every ſuch Patentee &c. their Heirs, Executors &c. within one Year after Office, or other due Proof, Order or Decree thereof, had or made, or to be made within ten Years after the End of the preſent Seſſion of Parliament &c. ſhall pay for ſuch Overplus after the Rate of 60 Years Purchaſe, according to the Value anſwered at the Time of making ſuch Patents.

61. 4s. 10d. and of divers other Lands in Wells, of the yearly Value of 19l. and of the Rectory of

of A. of the Value of 10 l. And J. S. intending to purchaſe of the Queen the ſaid Scite and Demeſnes procured a Particular to be made accordingly, and obtained Letters Patents, by which Letters Patents *the Queen, without Intention of the Purchaſer to have more paſs to him than the Scite and Demeſnes, gave the ſaid Scite and Demeſnes, and the other Lands and Rectory*; and ſo the Patentee had more than was any ways meant or intended. The Queſtion was, If the Patentee ſhould anſwer according to the Rate of 60 Years Purchaſe, mentioned in this Statute; For in the Particular, no Rate or Value was made of any of the Lands or Rectory, but only of the Scite and Demeſnes, nor was there in the Patent any Value of any Part: Wherefore, ſince the Statute ſays, That the 60 Years Purchaſe ſhall be paid for the Overplus aud Value, which is more than is contained in the Patent, Particular, or Rate; and here is no Value of them in the Particular or Patent, it was held by ſome that nothing ſhould be paid to the Queen; But the Caſe conſidered, it appears, that the Intention was, that ſhe ſhould have Satisfaction for ſo much as ſhe did not intend to paſs according to the annual Value; and the Words are to this Purpoſe; For tho' there is no Value of the greater Part of the Tenements granted by her, made in the Particular or Patent, yet they were demiſed for Rent, which was a Rate made by the Officer, and ſo remains in the or Account of the Auditors; But if the Queen had *granted a Wood or other Thing, which never had been rented*, it was held by the two Ch. J. and Baron of the Exchequer, That in ſuch Caſe ſhe had not been aided by the ſaid Statute. And. 116. Pl. 155. Anon.

H. 8. in the 33d Year of his Reign made a *Leaſe for Years* to the Earl of B. *of the Rectory of Bridgwater, and of the Tithes of two Hamlets in W. parcel of the Rectory of W. the Reſidue of which Rectory was demiſed by the King at 10 l. a Year Rent, and ſo continued in Demiſe till 2 Eliz. when A. purchaſed of Queen Eliz. the Rectory of W. at the Value of 10 l. a Year, and had general Words of the Tithes of two Hamlets, but no Recital of the Leaſe of the Earl of B. then in Eſſe, and thereby ſhe granted the Rectory of B. and the Tithes of two Hamlets, and all contained in the Earl of B's Leaſe, to the Corporation of Bridgwater.* Afterwards Boſſeville, the Son of A. after this Statute of 18 Eliz. which had Retroſpect to the Beginning of her Reign, claimed the Tithes of the ſaid two Hamlets againſt the Corporation; Upon this a Bill was preferred in the Court of Wards, and it was agreed by Counſel on both Sides, That the Patent made to A. was void at the firſt, as to the Tithes of two Hamlets, for Want of Recital of the Leaſe thereof then in Eſſe to the Earl of B. and ſo continued void till the Statute of 18 Eliz. Two Queſtions were made. 1ſt, If the Statute of 18 Eliz. will make the Grant good by Relation againſt the Corporation of B. who had taken New Grant of the Tithes of the two Hamlets in 3 Eliz. becauſe the Statute is, *That Patents made ſince 2. Nov. 1 Eliz. ſhall be good againſt the Queen's Majeſty, her Heirs and Succeſſors, notwithſtanding Non-recital* 2dly, If the Deceit in under-valuing the ſaid Tithes of the two Hamlets, which made the Grant void, be remedied by the Statute alſo by Relation of the Patent made, or of the Statute made; And it was argued, That the Patent, without Recital, is made good againſt the Queen, her Heirs and Succeſſors, but not againſt others, and conſequently not againſt the Corporation of B. Afterwards by the Opinion of the two Ch. J. it was agreed againſt Boſſeville. Mo. 131. pl. 278. Trin. 25 Eliz. Boſſeville v. the Corporation of Bridgwater. --- 2 And. 190. S. C. by Name of **Hallifwell v. the Corporation of Bridgwater** ſays, The Grant to the Corporation of Bridgwater was for 21 Years, and the Grant to A. was to him and his Heirs, and the Leaſe to the Corporation was agreed to be good; For the Intention of the Statute was not to make good Grants void, but void ones good, and that the Inheritance ſhall be in Boſſeville, by reaſon of this Statute, which makes it good againſt the Queen. And that if there are two Leaſes made by the King, whereof the firſt is void &c. and the 2d good, the ſecond remains good and the firſt void --- Sav. 58. S. C. reported thus, viz. J. S. was poſſeſs'd of a *Leaſe for Years* of a Manor, of the Demiſe of the Queen. *A. took a new Leaſe* in 2 Eliz. for 21 Years, *without reciting the Leaſe to J. S.* for which Reaſon this ſecond Leaſe is void. Afterwards *Boſſeville got a third Leaſe for 30 Years, with a Recital of the former Intereſts.* It was agreed by all the Juſtices and Barons aſſembled at Serjeant's Inn, that by this Statute all Patents are made good againſt the Queen, her Heirs &c. but not againſt her Patentees and Aſſignees; and that to make the Leaſe to A to be good, which was void at the Commencement, would be a hard Conſtruction of the Statute.

The Queen *made a Leaſe* of Lands to A. *and granted the Reverſion to J. S. miſreciting the Tenant's Name*, and afterwards *made a third Grant to W. R. with a true Recital of the Tenant's Name*; and *afterwards this Statute was made*; this ſhall not revive the firſt [2a] *Grant*, becauſe it was *utterly defeated before the Statute.* Cro. E. 808. ſays, This was cited to be reſolved by Advice of the Judges in the Court of Wards, in one **Bridgwater's** Caſe; and that all the Juſtices now affirm'd it to be good Law. Hill. 43 Eliz. C. B. in Caſe of Child v. Low.

A. ſeiſed in Fee, was attainted in a Premunire, but before Trial gave his Land in Tail to J. S. Afterwards he was attainted of Premunire, and this was found by Office under the Exchequer Seal. Queen Elizabeth granted theſe Lands to C. under the Great Seal, within the Time of the Proviſo of 18 Eliz. cap. 2. Reſolved that the Grant by the Queen was not good at Common Law, becauſe upon the Attainder the Franktenement was not diveſted, and veſted in the King till an Office found thereof, which ought to be an Office of Intitling, and not of Information only of the Particulars of the Lands; and alſo reſolved, That this Grant is not aided by this Act of 18 Eliz. for *the Intention of that Statute was to make a Grant good, where the Eſtate of Franktenement was ſettled in the King, and no Office found*; In ſuch Caſe this Statute aids the Defect of finding an Office, according to the Statute of 18 H. 6. cap. 6. but not to make a Grant good, where the King has not any Eſtate before Office found. 2dly. This

Statute makes the Grant good againſt the King, his Heirs and Succeſſors, and not againſt a Stranger; and therefore does not defeat the Eſtate of the Donee in Tail; and ſo upon this Point without Argument, Judgment was given for the Defendant. Jo. 217. Mich. 5 Car. B. R. Groſſe v. Gayne. ——— Cro C. 172. pl. 18. S. C.

9. The *Queen demiſed a Rectory* to the Churchwardens of S. *for* 21 *Years*, and *afterwards* by Letters Patents, *reciting the firſt Grant*, and that the Church-wardens had ſurrendered all their Eſtate for Years, (Modo habentes & ad præſens Poſſidentes) &c. the. *in Conſideration of* the ſaid *Surrender*, *and* for *a Fine of* 20 *l.* &c. *demiſed* the ſaid Rectory *to them for* 50 *Years*. It was adjudged, That there need not be any actual Surrender of the firſt Leaſe, becauſe the Words in the ſecond Leaſe, (viz.) Modo habentes & ad præſens Poſſidentes import, that they were then poſſeſſed of the firſt Leaſe, and their Acceptance of the new Leaſe for 50 Years *was in Judgment of Law a Surrender of the firſt Leaſe for* 21 *Years*, and ſhall precede it, and that a Corporation may make a Surrender of their Term by an Act in Law without Writing, tho' not an expreſs Surrender without Writing. And the Reporter adds, That he had ſeen ſeveral other Letters Patents made on the like Conſideration of a *Surrender*, *with the Words (Modo habens & Poſſidens)* in none of which there was ever any actual Surrender made. 10 Rep. 66. b. Trin. 11 Jac. in Scacc. Church-wardens of St. Saviour's Caſe.

(R. b. 2) Recital and *Pleadings*.

S. C cited 1 Rep. 43. a. in Altonwood's Caſe. ——S. C. cited Pl. C. 455. Trin. 15 Eliz. in Sir Tho. Wroth's Caſe.

1. IN the Patent to A. to be quit of Collection of Tenths it was recited, That *for as much as the Abbey is the free Chapel of the King*, *he granted that the Abbot ſhall be diſcharged of Collection of Tenths*, and therefore he ought *to aver the Recital of the King*, upon which it is [viz. that it is] (the free Chapel of the King) and becauſe he did not, therefore ill; but Huſſey Ch. J. e contra. And per Cur. the Patent was diſallowed becauſe it was ill pleaded, in as much as he pleaded it *quod continetur inter alia*, *that ſuch a Thing was* &c. and *did not aver it in fact*; but it was ſaid per Cur. That at another time he ſhall have Advantage of the Patent, and ſo it is not loſt for ever. Br. Patents, pl. 71. cites 21 E. 4. 47.

S. C cited Pl. C. 455. in Sir Tho. Wroth's Caſe.

2. *And* where the King *recites*, *That whereas I have done him good Service*, *and am Decrepit* and Lame, *therefore he grants* to me &c. there I need not *to aver the Service* nor Reſidue in the Rehearſal, where the Patent is *Ex certa Scientia & Mero Motu*; for there the Rehearſal is void, and the Patent good; Per Huſſey Ch. J. Ibid.

3. *Otherwiſe* it is *where the Surmiſe comes of the Part of the Party* Ibid.

4. *As* where the King *grants a Manor which eſcheated* to him &c. and *in truth it is his Inheritance* the Patent is void; For it ariſes of a falſe Surmiſe of the Party himſelf, but where it comes from the King, and not from the Party the Rehearſal is void and the Grant good, Quod Curia conceſſit. Ibid.

5. *But* where the King *grants Land*, *in as much as the Grantee ſhall releaſe all his Right in ſuch Lands to the King*, there he ought to *aver that he has releaſed accordingly*. Ibid.

S. C. cited Pl C. 455. Trin. 15 Eliz. in Sir Thomas

6. *So* where the King *for Service performed Grants* to a Man Land, this is good, tho' he *did no Service*; Per Fairfax Juſtice, and therefore it ſeems, that there is a *Diverſity where the King himſelf takes Conuſance of the*

the Surmiſe or Conſideration, *and where* the King *has it by Information* and Surmiſe of the Patentee. Ibid. Wroth's Caſe.

(S. b) Grant of the King. *Repealed* by or without Scire facias. In what Caſes a Patent may be repealed and made void *without Scire facias.*

1. IF the Patentee of the King of an Office commits a Forfeiture by Condition in Fact, or in Law broken, the King may ouſt him before any Scire facias granted, or Office, or making of any new Patent. Co. 9. *Sir G. Reynell.* 95. b. Dy. 3 El. 198. 50. and 211. 29. contra, Where there is *but one Patentee who has committed a Cauſe of Forfeiture of an Office, whereof the King has not made any new Patent*, there the Patentee ſhall not be ouſted by the King unleſs by Scire Facias at the King's Suit; Per the Reporter. D. 198. a. pl. 50. who ſays, He infers it from certain Precedents there cited, and that the Reaſon ſeems to be, That he who is *placed in an Office by Matter of Record, whereof the King has Notice, ought not to be removed but by Matter of Record* viz. by Scire facias and Avoidance of the Letters Patents &c. and cites S. P. between Sir Robert Cheſter and Ld Haſtings.

If the Forfeiture be of an *Office for Life*, tho' the Conviction be of Record, yet there muſt be a Scire Facias; Per Holt Ch. J. 12 Mod. 79. But otherwiſe of an Office *at Will.* The King v. Kemp.

2. If the King grants Land by his Letters Patents under the Great Seal, and in the lower part, after all the Patent ended, it is put (per Warrantum Commiſſion.) this being done by Warrant of the Commiſſioners of defective Titles upon Compoſition with them made, if the Commiſſioners had not an Authority by their Commiſſion to make any Compoſition in this Caſe by force of their Commiſſion, and ſo this is out of their Commiſſion, thoſe Letters Patents are void in Law without any Scire facias to repeal them, and it is good Pleading [to ſay] Non conceſſit &c. againſt thoſe Letters Patents. Trin. 12 Car. B. Rot. 344, 345, between *Beſtney, Betts, and Otway* for the Vicaridge of Cateras in Com. Cambridge in a Quare Impedit; Reſolved per Curiam upon Evidence at the Bar, and the Plaintiff nonſuited upon this Reſolution, (But quære how this Averment dehors may be taken againſt the Letters Patents, the Words Per Warr. Commiſſ. not being within the Body of the Patent, but after all the Patent ended.) But it ſeems this Averment may well be, in as much as in the Commiſſion it is appointed, that upon the Warrant of the Commiſſioners the Patent ſhall paſs under the Great Seal without other Warrant, and in the end of the Patent is put (per Warrant. Commiſſionar.) Mich. 16 Car. B. R. between *Pitkin &c. and ..... pſon.* and others, per Curiam upon Evidence at Bar.

3. Patent of the King ſhall be *reverſed in Chancery by Suit there only, by Petition, Traverſe, or Monſtrans de Droit, and Scire facias thereupon.* Br. Juriſdiction, pl. 102. (bis) cites 21 E. 3. 46. Scire Facias to repeal the King's Patent can only be in Chancery. Br. Petition, pl. 11. cites 21 E. 3. 47. ——— Where the *King grants the Land* by Patent, and *one* comes and *traverſes the Office*, he ought to have Scire Facias in Chancery againſt the Patentee before Iſſue joined. Br. Scire facias, pl. 185. cites 14 E. 4. 1. 6. ——— Br. Traverſe de Office, pl. 39. cites S. C.

4. If the *King be ſeiſed*, be it *right or wrong*, a Man ſhall ſue to him by Petition; Per Wilby; Quod Nota; and this where the King enters

ters or ſeiſes without Office as it ſeems, but upon falſe Office a Man may Traverſe. Br. Petition, pl. 12. cites 24 E. 3. 55.

5. A Man *ſtruck a Juror at Weſtminſter* who paſſed againſt him, *for which* he was adjudged to Priſon for his Life, and his Hand to be cut off, and *his Lands ſeiſed into the Hands of the King*, and *the King*, thinking it had been forfeited, *granted it to W. N. and afterwards* he *pardoned all the Offence to the Offender, and all that to him belong'd*, by which the *Heir ſued Scire facias, reciting the Act, the Grant, and the Pardon, to ſay why the Land ſhould not be re-ſeiſed*, and Livery made to the Heir; and the *Tenant demanded Judgment, becauſe the Scire facias was not founded upon Record, and the Charter is no Warrant of the Judgment* &c. Et non allocatur, but Execution was awarded. Br. Scire facias, pl. 160. cites 41 Aſſ. 25.

Br Confirmation, pl. 1. cites S. C. — Br. Procedendo, pl. 12. cites S. C.

6. *Quare Impedit* brought *by the King by reaſon of the Cuſtody of a Ward* becauſe the Grantor of the Anceſtor of the Infant of this Advowſon had preſented; and the *Grantee obtained Ratification of the King*; and becauſe it was perceived that it ſhould be *prejudicial to the King* the Ratification was repealed, and Procedendo granted in the Quare Impedit; Quod Nota; Br. Repellance, pl. 1. cites 45 E. 3. 19.

7. Where the King *re-ſeiſes* or reſumes *Land after Livery made to a Prior Alien* &c. *without Cauſe ſhewn*, the Party ſhall have *Petition and Scire facias againſt him who has the Land*; *but if* it be re-ſeiſed or *reſumed for Cauſe* ſhewn, he ſhall have *Traverſe* to the Cauſe, *and Scire Facias* againſt him who has the Land; Per Cur. and ſo it was done there. Br. Scire Facias, pl. 55. cites 2 H. 4 10.

Brooke ſays, the Law ſeems to be the ſame *upon every Scire Facias* to repeal a Patent, *if the Patentee* be warned *and makes Default.* Ibid.

8. *Traverſe* was taken *to an Office which intitled* the King *to the Land by Ward which was granted by Patent to A. B.*——*C.* came and *traverſed the Office*, and had Scire Facias *againſt A. B. who was warned, and did not come*; and therefore per Cur. his Letters Patents are void. Br. Scire Facias, pl. 131. cites 4 H. 6. 12.

Br. Livery, pl. 13 cites S. C. —— Br. Reſeiſer, pl. 6. cites S C.

9. *Where the King ſeiſes for Felony and Leaſes for Life, and a Stranger has Title*, there the King ſhall reſume and make Livery to the Party; for there he has Reverſion. And where the King makes *Feoffment of Land in Ward*, in this Caſe the Letters Patents ſhall be repealed, and the Land reſumed into the Hands of the King, and Livery made to the Heir; for there the King had not Fee Simple to give. Br. Scire facias, pl. 58. cites 7 H. 4. 20.

Br. Livery, pl. 16. cites S. C.

10. Scire facias was ſued to repeal Letters Patents, inaſmuch as King *E.* 3. *was poſſeſs'd of Land in Ward, and died*; and this came to King *R.* 2. who *granted it for Life, the Remainder over in Fee*; and the Land was reſeiſed, and Livery made to the Heir Sine Exitibus, and the Letters Patents revok'd and annull'd; quod nota. Br. Scire facias, pl. 63. cites 7 H. 4. 41.

11. Writ of *Error* was ſued *upon an Outlawry of Felony*, by which *Scire facias was awarded againſt the Lords* Mediate and Immediate, *and* againſt the *Tertenants* who were warned; and *one came and alledged Grant by the King for Term of Life*, and *prayed Aid of the King*, and had it; and after Procedendo they were *at Iſſue, if the Party was impriſoned at the Time of the Outlawry* pronounced or not, and *found for the Outlaw*; by which *he prayed that the Outlawry be reverſed, and the Letters Patents repealed*; which was denied him: Whereupon *Judgment was given that the Outlawry be reverſed, and he reſtored to the Common Law*, and to all that he loſt for this Cauſe; and as to the Letters Patents they would adviſe; but by this Judgment of Reſtitution he ſhall re-have his Land; Per Gaſcoign and Huls; but Tyrwhite contra, before another Scire facias ſued; and he held ſtrongly, that he *ſhall have another Scire facias*, and thereupon the Outlaw pleaded Pardon of the King of the Felony; and it was allowed. Br. Scire facias, pl. 76. cites 11 H. 4. 53.

12. If

12. If *Traverſe of Office is tender'd*, and the *Plaintiff takes the Land to Farm according to the Statute*, and finds Surety, and after it is *awarded that the Traverſe does not lie*, by this the *Farm and Surety is diſcharged, without* ſuing *Scire facias to repeal the Patent of the Farm.* Br. Scire facias, pl. 172. cites 4 E. 4 29. Br. Patents, pl. 74. cites S.C. for now it appears that the Plaintiff has no Title.

13. Where a Man *traverſes Office for Land, Office* &c. *which paſſes for him*, and againſt the King, there *he ſhall have Scire facias againſt him who has it of Grant of the King of Eſtate certain*, as for Life, or Durante minore ætate, or the like; *contra againſt him who has only the Occupation at Will.* Br. Scire facias, pl. 173. cites 5 E. 4. 3.

14. Where the King by his Letters Patents dated *1ſt May grants* to me an Office or other Thing, and after by other Patents dated *2d May, he grants the ſame Thing to a Stranger*, thoſe ſecond Patents are merely void; and yet I ſhall have Scire facias againſt the ſecond Patentee, and avoid thoſe laſt Patents by Judgment of the Court. Per Cur. Keilw. 196. b. Mich. 9 H. 8.

15. Scire facias to repeal the Grant of the Office of *Remembrancer of the Exchequer* to one Blague, made 18 H. 7. and afterwards in the 3 H. 8. he was made Baron of the Exchequer, Quam diu ſe bene geſſerit in eodem Officio Baronis. Afterwards H. 8. at the Requeſt of Blague, granted the ſaid Office of Remembrancer to Blague's Son for Life, To Have after the Surrender or Demiſe, ſeu aliquo Modo quocunque & quandocunque vacare contigerit. And becauſe Blague had no legal Eſtate after his being made Baron, upon Scire facias returned, and Default made Judgment was given to revoke the laſt Patents &c. D. 197. b. 198. pl. 47. cites Hill. 15 H. 8. Blague's Caſe.

16. Scire facias iſſued to repeal a Grant of the *Office of Bailiff of the Hundred* of C. *which P. the Plaintiff had by Inheritance in Fee Simple*, and was expulſed &c. by Colour of Letters Patents. Upon the Scire facias return'd, and Nil Dicit, the Patent was revoked, and P. reſtored to the Office Una cum Exitibus, with a Salvo Jure cujuſlibet. D. 198. a. pl. 49. cites Hill. 28 H 8. Penwarren's Caſe.

17. The Lord Ch. J. Brooke *granted* to G. *the Office of Prothonotary* of C. B. and *afterwards revoked it* without a Scire facias, *becauſe* he was *incapable* to execute that Office, and granted it to another; and thereupon a Precedent was ſhewed, 5 Ed. 4. where the Office of the *Clerk of the Crown* was granted to one Vyntner, and Croxon who died; and then Vynter exhibited his Patent, and prayed Admittance; but the Court would not admit him to the Office, becauſe he was unexperienced in it; and his Diſability being ſignified to the King, Ore tenus, without a Scire facias, he commanded them to ſwear and admit another. Dyer 150. b. pl. 1. Mich. 4 & 5 Ph. & M. Vynter's Caſe. 2 And 118. S. C.

18. Sir Maurice Berkly having the *Office of Banner-bearerſhip* in the Field, *ſurrender'd the ſame before a Maſter* in Chancery *out of Court*, but *did not deliver up his Letters Patents to be cancelled*, this Surrender was accepted and recorded by the ſaid Maſter; and thereupon the Office was granted to Sir John Sullyard. Afterwards Sir Maurice Berkley brought a Scire facias to repeal the Grant to Sullyard. And the Queſtion was, Whether the ſaid Record was ſufficient to make a Surrender, or not. But the Matter was compounded by the Lord Keeper, Ex Aſſenſu Partium; and Sir J. S. was removed, and Sir Maurice was reſtored Sine Exitibus vel Feodis medio tempore receptis. D. 176. pl. 29. Hill. 2 Eliz. Sir Maurice Barkley v. Sir John Suliard.

19. The Tenant of the Plaintiff *conveyed* the Land *to the King*, and the *King conveyed to a Corporation*; ſo as in Rigour of Law the Seigniory of the Plaintiff was extinguiſhed; but the King was deceived in his Grant; for he was made an *Inſtrument* to do Wrong, *to deprive the Plaintiff of his Seigniory*, and therefore the King's Grant was void. Upon the whole Matter, foraſmuch as the Plaintiff's Tenant can't have the Land, becauſe he has conveyed it to the King, and the King can't have the Land, becauſe of the Wrong it would do to the Plaintiff as to his

Seigniory, therefore the ſaid Letters Patents ſhall be repealed. If the Plaintiff's Tenant had conveyed the Land to the King by Deed inroll'd, or had been attainted of Treaſon, and the King had granted it to a common Perſon to hold of the King; now the Seigniory of the Lord in this Caſe had been extinguiſhed; but the King upon Petition ought to repeal this Patent, and grant it ſo that the Seigniory of A. ſhall revive. Jenk. 22. pl. 40.

20. Upon a Scire facias againſt Richard Earl of Dorſet, and others, Members of Sackvill-College in Eaſt Grinſted in Suſſex, to ſhew Cauſe *why the Patent of Incorporation ſhould not be repealed*, ſo far as it concerns Edward Earl of Dorſet, and the Heirs Males of Robert Earl of Dorſet the Founder; the Writ recited the Will of *Robert*, who *deviſed to his Executors* &c. *that they ſhould Found and Endow the ſaid Hoſpital, and make By-Laws, and that the Heirs of the Founder ſhould have the Patronage and Viſitation* thereof. It recited alſo, that *the King* intending to incorporate the ſaid Hoſpital according to the ſaid Will *conſtituted the Corporation*, and granted Licence to purchaſe the Endowment intended; *and* alſo that Edward Earl of Dorſet, who was *Heir Male of the Founder, ſhould have the Patronage and Viſitation*; reciting further, that the Lady Thanet and the Lady Compton are Heirs of the Founder, and that Edward Earl of Dorſet had taken upon him the Patronage and Viſitation; to the Diſinheriſon of thoſe Ladies: Upon this Scire facias Richard Earl of Dorſet demurr'd. As to the Queſtion between the Heirs General of the Founder, and the Heirs Male, Twiſden J. held, that the Letters Patents to Edward Earl of Dorſet and his Heirs Male are void, and ought to be repealed, and may be repealed, tho' they are void; and cited Hill. 12 H. 7. Keilw. 19. a. per Keble. And that they are void appears, 1ſt. Becauſe they are contrary to the King's Intention, as Hob. 223. Anne Needler's Caſe; 10 Rep. 110. b. Vow's Caſe. 2dly. The King cannot deprive the Patron of thoſe Rights which are appendant to him, which are Jus Patronagii and Jus Viſitandi, which are in Earl Robert and his Heirs; but the Lord Ch. Baron Hale gave ſeveral Reaſons why he could not give Opinion to repeal this Patent without great Cauſe. He held, That ſuch Scire facias lies not in Point of Form. 1ſt. A Patent may be repealed in Part; but this ſhall be only in Clauſes independent. Fitzh. Petition 19. 2dly. There will be an infinite Inconvenience, if by this Way Part of this Patent may be repealed; for by this Way a good Patent may be made nought; & e contra. 3dly. The King had ſaid How he will have this Corporation qualified, and he is dead, and now he will make other Patrons after his Death. 4thly. The King hath ſaid How it ſhall be governed, and Not Otherwiſe. And here is no Neceſſity to repeal this; becauſe if there be void Clauſes they may be tried in Aſſiſe, and therefore the Writ is ill. 2dly, It doth not lie for the Matter. 1ſt. Becauſe the King takes Notice of the Clauſes in the Will, which was deſired to be repealed; and therefore he is not deceived in this Grant. In the Creation of the Hoſpital, Sunt tres Actores fabulæ, 1. Earl Robert. 2. The King, whoſe Right is to grant the Incorporation. 3. The Executors, which ought to endow this Hoſpital. 2dly. The Executors are not at any Prejudice, becauſe they are not compellable to indow this Corporation, if it be not according to the Will of Earl Robert. 3dly. If the Executors have indow'd the Hoſpital, being ſo created, it is a Breach of Truſt. There is no Patronage till the Foundation of the Hoſpital, and the Heir of Robert hath not to do with it till the Foundation; and the Executors do not break the Truſt. The Lord Keeper would adviſe; and ſo it was adjourned. Raym. 154. Trin. 18 Car. 2. B.R. and 177. Paſch. 21 Car. 2. B. R. The Caſe of Sackvill-College.

21. In Error of a Judgment in Scire facias in the Petty-Bag, which ſet forth, That the City of Rocheſter was an ancient City, and incorporated Time out of Mind till 1 Ed. 4. who incorporated them by a new

Name

Name of &c. That before and after that Time they had a Market there, held every Wedneſday and Friday, and Toll &c. And that the King by Letters Patents, 7th of March laſt paſt, reciting an Inquiſition upon an *Ad quod damnum*, by which it was *found*, *That it would not be to the Damage* of the King, or of any other Perſon, *if the King ſhould grant to the Defendant a Market* in Chatham, to be held there every Tueſday, whereupon he granted to the Defendant a Market, to be held there every Tueſday, Cum omnibus Proficuis &c. prout per literas patentes apparet; And that Whereas Chatham is within a Mile and a Half of Rocheſter; And Whereas Datum eſt Nobis intelligi by the Mayor &c. of Rocheſter, that *the Writ of Ad quod damnum was executed on the Day it bears Date at* 30 *Miles diſtant from Rocheſter, and without Notice* given to the Mayor &c. Surreptiſioſe & Fraudulenter; and that the Grant is Ad damnum of the City of Rocheſter, and of the Market there; and by Reaſon thereof the Grant is void; Therefore the Sheriff of Kent is commanded to warn the Defendant &c. to ſhew Cauſe why the Letters Patents ſhould not be cancell'd. The Defendant demurr'd, and the Attorney-General joined in Demurrer. And the Lord Chancellor Finch, aſſiſted by North Ch. J. and Jones J. gave Judgment, that the Letters Patents ſhould be cancell'd and vacated: Whereupon the Defendant brought a Writ of Error in the Houſe of Lords; and there it was objected, That this Scire facias doth not lie to repeal Letters Patents, becauſe there is another Remedy at Common Law, by Aſſiſe of Nuſance, or Quod Permittat, where the Matter may be tried by a Jury. But the Judgment was affirm'd; and it was reſolved that the King hath a Right to repeal a Patent by Scire facias, in which he was deceived, or the Subject prejudiced. 3 Lev. 220. Trin. 1 Jac. 2. in the Houſe of Lords, The King v. Butler.

22. A Grant was made by the Crown, for the ſetting aſide whereof an *Engliſh Bill* was brought, and it was argued, that it was the proper Remedy in this Caſe; for that no Scire facias would lie, it not being a Record of this Court; and if it would, yet it would not reach the Fraud objected, it not appearing within the Body of the Grant; and that in this Caſe Equity did but follow the Law, and that it was not fitting it ſhould be left in the Power of the King's Officers, by their Connivance in paſſing Grants, to put the King without Relief in a Caſe of *Fraud and Surprize*; and tho' there was *no Precedent of ſuch Suit*, yet all Precedents had a Beginning, and that, in this Caſe, was ſufficient Ground for a Decree, there being all the *Badges of Fraud and Surprize imaginable*, &c. In the paſſing the Grant there was *no Warrant to the Auditor to make out the Particulars*; *nor to the Surveyor, to return an Eſtimate*; nor *Bill with a Docquet, ſign'd by the Attorney*; nor any of the uſual Methods obſerved, *but only a Warrant under the Sign Manual* for paſſing the Grant in Queſtion *to the Chancellor, and counterſign'd by him*; which is making a Warrant to himſelf, a Thing never before heard of. And tho' a Patent may paſs by immediate Warrant under the Privy Seal or Signet, yet this is in Effect no Warrant, being only under the Sign Manual, and no Seal, either Privy or Signet, to it. That this Matter *was diſpatched with great Hurry*, the Warrant being ſign'd the 29th, and the Patent paſſed the Dutchy Seal the 31ſt of the ſame Month, tho' it would take a Week's Time to ingroſs it; and that here the *Petition Propoſal*, the *Chancellor's Report*, and *Warrant for the Grant*, are *all of the Writing of the Grantee's Servant*; And that the *over-value was exceſſive*. And for thoſe Reaſons the Patent was ſet aſide by the Chancellor, aſſiſted by Jones, Ch. J. and Montague, Ch. B. See Vern. 277 to 282. Mich. 1684. And 370, 382, to 392. Hill. 1685. Attorney-General v. Vernon, Brown and Boheme.

(T. b.) What ſhall be good Cauſe to repeal a Patent *upon a Scire facias.*

The Earl of Kent ſued Petition to the King, for that *E.* 2.

1. IF the King grants a Patent by Fraud or falſe Suggeſtion, by which he is deceived, he may avoid it upon a Scire facias Jure Regio. 21 E. 3. 47. Co. 11. *Mag. College.* 74. b.

gave to his Father 60*l. Rent out of the Vill of C. in Tail*, his *Father died, he within Age*, and the *King ſeiſed by Ward the Plaintiff*, who is *yet within Age*, and the *King by his Letters Patents gave to the Lord J. M. in Fee*; and becauſe the King is bound to render to the Heir as fully as it came to him, he pray'd that the Patent be repealed, and the Rent reſeiſed; upon which the Petition was indors'd, that the Archbiſhop of Canterbury and certain others, calling to them the Chancellor, ſhould do that which is fair according to Law and Reaſon; upon which *Scire facias was iſſued to warn J. M. to appear in the Chancery*, to ſay why the Patent granted by *falſe Suggeſtion* ſhould not be repeal'd, and the Rent reſeis'd; which Suggeſtion was, *that the Land came to the King by the Attainder of R. F.* Whereupon J. M. came and ſaid, that foraſmuch as this Suit is to defeat Frank Tenement, and to reſtore it to another, that this ſhall be at the Common Law, et non Allocatur, becauſe it is to repeal Patent of the King, which cannot be but only in Chancery. Br. Petition. pl. 11. cites S. C. —— Br. Patents. pl. 14. cites S. C.—— Br Scire facias. pl. 104. cites S. C.

M. was ſeiſed of an *Houſe* &c. which he *held of the Biſhop of Wincheſter, and would convey the ſame to the Friars Carmelites, but the Biſhop would not conſent*; whereupon the Friars and the Tenant agreed, that the *Tenant ſhould grant it to the King, and he to the Friars*, which was done accordingly; and afterwards upon Averment of this Fraud by the Biſhop, the Patent was repealed, and the Biſhop reſtored it to his Seigniory. cited Roll R. 168. in the Caſe of Warren v. Smith Per Houghton, Doderidge, and Coke, as 17 E. 3. 59. Meriot's Caſe.

The Queen *preſented where ſhe had no Right*, and Quare Impedit was brought againſt the Incumbent and the Biſhop, and adjudged for the Plaintiff. The Defendant afterwards perceiving this, brought Treſpaſs againſt the Plaintiff, whereupon the ſaid Plaintiff (now Defendant) was outlaw'd, and then the (now) Defendant *reſign'd, and the Queen preſented him again*; whereupon he was inducted; and after the Plaintiff brought a Writ of Error and revers'd the Outlawry; and then brought Scire facias upon the Judgment in the Quare Impedit againſt the Defendant, where all this Fraud appeared to the Court, and therefore he recover'd the Preſentation. cited by Doderidge, J. as Trin. 30 Eliz. Rot. 139. B. Beverley v. Corbet.

2. Scire facias upon *Suggeſtion, that Tenant in Tail*, the *Reverſion to the King, had purchaſed Licence to alien in Fee, and retook to him and his Feme in Tail, the Remainder to his right Heirs*; and Exception was taken, inaſmuch as it was not warranted by any Record, et non Allocatur; for it ſuffices upon Suggeſtion. Br. Scire facias. pl. 159. cites 40 Aſſ. 36.

Br. Scire facias. pl. 223. cites 8 H. 4. 21.

3. Scire facias was ſued to reverſe certain Letters Patants made by the King, who was *intitled by Office* before the Eſcheator, *that J. N. committed Treaſon where he was never indicted* of the Treaſon, and the Tenant pray'd in Aid of the King, and had it; and after Procedendo came, and he ſaid nothing; by which the Court bid the Plaintiff ſue Procedendo to Judgment; for this Title is not ſufficient for the King, becauſe the Party does not loſe the Land 'till he be attainted. Br. Scire facias. pl. 66. cites 8 H. 4. 21.

So a Patent *for a Market*, where another ancient Market was within a

4. Scire facias was ſued to repeal certain Letters Patents of a Grant of a Fair, Ita quod non ſit Præjudicium vicinis feriis; and becauſe it ſurmiſed to be *Nuſanee to another Market or Fair*, therefore Writ iſſued &c. Br. Scire facias. pl. 71. cites 11 H. 4. 5.

Mile and an half of it, which was much damaged by it, was decreed by Finch, C. and aſſiſted by North, Ch. J and Jones, J. upon a Scire facias, to be repeal'd, *tho' an Ad quod Damnum had iſſued*; and was return'd, that it was not to the Damage of any. 2 Vent. 344. Hill. 31 & 32 Car. 2. in Canc. Sir Oliver Butler's Caſe.—This Decree was affirm'd in the Houſe of Lords. Trin. 1 Jac. 2. 3 Lev. 220. the King v Sir Oliver Butler. —— cites 2 E. 3. 34. Scire facias to repeal a Patent of Toll. And 17 E. 3. 59. b Of Market. 11 H. 4. 5. Of Market. D. 197, 198, 276. And they ſaid, there never was any Queſtion, Whether the Writ lay, but only of the Manner, and other incident Matters.

Scire facias was brought to repeal the

5. Scire facias to repeal a Grant of an Office of Auditor for a *Forfeiture* in not producing an Account at ſuch Time as he ought to do; and being return'd Warn'd, he made Default; whereupon Judgment was given

given for the Forfeiture, and that the Letters Patent and the Inrolment thereof be annull'd. D. 197. b. pl. 46. cites Mich. 14 H. 8. Toly's Caſe.

Grant of the Office of the *Serjeant at Arms*, for *not attending his Office*, ſo that the King's Buſineſs remain'd not done; In Contemptum Regis &c. Nihils return'd and Default, Judgment was given accordingly, and that the Office be And upon two ſeized into the King's Hands as forfeited &c. D. 198. a. pl. 48. cites Trin. 26 H. 8. Eſton's Caſe.

6. Altho' the King, as to his natural Perſon, may be within Age, yet his natural Perſon being joined with his politick, they are one indiviſible Body. And he ſhall not avoid his *Grants made within Age*, nor his Leaſes by Nonage, whether he be ſeiſed in Tail, or in Right of the Dutchy of Lancaſter, or in Right of his Crown. The Lands of the Dutchy of Lancaſter are ſever'd from the Poſſeſſions of the Crown, as to the Manner of granting them; but for Age, Aid, and ſuch perſonal Relations, the Duke is as King; but the King may avoid his Grants *by Dureſs*; as in Caſe of Rebellion, if the Rebels having the King in Cuſtody extort Grants from him, as it happened in the Caſe of H. 3. in the Baron's Warrs. Jenk. 265. pl. 69. cites 2 Eliz. Plowd. 213.

7. In a Great *Vein of Lead*, Part of the Earth *fell upon a Miner, and kill'd him*; Only that Parcel, and not the whole Vein, was forfeited for a Deodand. The *King*, by his Letters Patents, *granted the ſaid Vein to J. S.* The *Lord Chancellor* of England, on the Prayer of the Owner of the ſaid Vein, *called in the ſaid J. S. by Scire facias* in the King's Name, *and* by the Prerogative Law *cauſed the ſaid Letters Patents to be revok'd*; *becauſe* they were *obtained ſurreptitiouſly*, and in Deceit of the King. Jenk. 64. pl. 21.

(U. b.) *Who may ſue* the Scire facias.

1. IF by an Office a Tenure is found of the King, **and that A. B. is in Ward to the King, and thereupon the** King grants the Wardſhip **of A. B. of Body and Land**; **and after** C. D. comes and traverſes the Office, **he ſhall have a Scire facias againſt A. B. to repeal his Patent.** 4 H. 6. 12.

2. **If the King grants** two ſeveral Patents of the ſame Thing, **the** firſt Patentee **may ſue a Scire facias** againſt the laſt **Patentee, to repeal the laſt Patent.** 37 H. 6. 14. **D. 3 El. 197. 45. Divers Precedents ſhewn accordingly.**

S. P Jenk. 126. pl. 56. cites 6 E. 4. 9. And adds, that if the firſt Patentee be ouſted, he has his Election to bring an Aſſiſe or Scire facias, if the Patents are for Lands or for an Office for Life. By the Juſtices of both Benches. Judge Jenkins ſays, that Regularly the Law is, That the firſt Patentee may have Scire facias againſt the ſecond, but the ſecond Patentee may have it againſt the firſt. —— Where *two Patents* are granted *of one and the ſame Thing*, tho' it be *known by the Name of the Manor of B. and of the Manor of S.* yet if the laſt ouſts the firſt, Scire facias lies to repeal the Patent; and if it be of divers Things, Aſſiſe lies, and not Scire facias. Br. Scire facias. pl. 176. cites 8 E 4. 6. — Br. Patents pl. 63. cites S C. —— Scire facias was awarded for a firſt Patentee to repeal Letters Patents of a ſubſequent Patentee to be *Park-Keeper*; and upon Return thereof, and a Judgment by Nil dicit, the Judgment was given in Chancery, that the Letters Patents be revoked. Dyer 197. pl. 45. cites 10 H. 8. Hunt v. Coffin.

3. **If the King grants two Patents of one and the ſame Thing,** the ſecond Patentee ſhall not **have a Scire facias** againſt the firſt **Patentee to repeal the firſt Patent. D. 10 El. 277. 54. Where it is ſaid, that this is contrary to the Books and Precedents and the Common Courſe. 39 H. 6. 33. Contra.**

4. **If the King grants a** Patent of Land, or of an Office, **he may ſue a Scire facias againſt the Patentee to repeal the Patent** upon

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an expreſs Condition broken, or for a Forfeiture by Force of a Condition in Law. D. 3 El. 197. 47. 4 El. 211. 29.

Hill. 3 Jac. 1. 5. If the Predeceſſor King aliens by Charter any of the Poſſeſſions of the Dutchy of Cornwall, the eldeſt Son of the Succeſſor King, being Duke of Cornwall, may bring a Scire facias in the Name of the King to avoid this Patent. Co. 8. The *Prince's* Caſe 1. So done and admitted. And Ibidem, Fol. 22. b. 23. Diverſe Precedents cited accordingly, without any Allegation of any Fraud or Deceit in the obtaining of it.

Br. Scire facias. pl. 175. cites S. C. — 6. 6 E. 4. 8. b. The firſt Patentee of the Office of Clerk of the Crown ſued a Scire facias, in the Name of the King, to repeal a ſecond Patent; but there reſolved in Cam. Scacc. Fol. 9. b. by the Juſtices, that both ought to be of the ſame Thing; for if the Patents are of ſeveral Things, and the firſt Patentee is ouſted by the ſecond Patentee, the firſt Patentee ſhall not have any Remedy by Scire facias, but is put to his Aſſiſe. [Baggot's Caſe.]

Br. Traverſe de Office. pl. 6. cites S. C. 7. Where the King is *intitled by falſe Office*, and grants the Land over, *he who is grieved* may traverſe the Office, and have Scire facias thereupon againſt the Patentee. Nota. Br. Scire facias. pl. 69. cites 9 H. 4. 6.

8. Where a Patent is granted *to the Prejudice of the Subject*, the King of Right is to permit him upon his *Petition* to *uſe his Name* for the Repeal of it in Scire facias at the King's Suit, and to hinder Multiplicity of Actions upon the Caſe; for ſuch Action will lie, notwithſtanding ſuch void Patent. Per Finch. C. 2 Vent. 344. Hill. 31 & 32 Car. 2. in Canc. in Sir Oliver Butler's Caſe.

9. Scire facias out of Chancery, returnable in B. R. to repeal Letters Patents of the *Rectory* of Algate; it was held, that if Letters Patents are granted *to the prejudice of any Subject*, he may have a Scire facias, upon the Inrolment of them in Chancery, to have them repeal'd, as well as the Queen may. As if a *Fair* be granted to the Damage of mine, I may Sue Scire facias to repeal ſuch Grant. Mod. Caſes 229. Mich. 3 Annæ. B. R. Brewſter v. Weld.

(X. b.) *What* Thing ſhall be [or amount to] *a Repealing*.

1. If the King brings a Scire facias againſt a Patentee to repeal his Patent, and the Patentee is returned warned, and makes Default, and thereupon Judgment is given againſt him, by this the Letters Patents are annulled, made void, and of no Effect. D. 3. El. 198. 50.

Ward of the Land and Body was granted to A. B. and C. — D. came and traverſed the Office; and had Scire againſt A. B. and was *warned and made Default*; & per Curiam, *by this Default his Letters Patents* of the Ward *are void*; Brook ſays, quære if the ſame Law be upon every other Scire facias to repeal a Patent, and ſays it ſeems clearly that it is. Br. Patents, pl. 20. cites 4. H. 6. 12. ——— *And* upon this another Patent was *granted* of the Land by the King to *C. D. until it ſhould be diſcuſſed between him and the King in the traverſe*, and after *C. D. was nonſuited*; and per Cheney and Hales Juſtices, by the Nonſuit *this is a Diſcuſſion of the Traverſe*, and therefore the Second Letters Patents are void alſo, quod nota Br. ibid. S. P. And *this Judgment ſhall be pleaded againſt the Patentee in any Court*. Br. Patents. pl. 23. cites 37. H. 6. 14 ——— Br. Scire facias, pl. 138. cites S. C

2. So the King granted at ſeveral Times two ſeveral Patents of one and the ſame Thing to ſeveral Patentees, and the firſt Patentee brought a Scire facias againſt the ſecond Patentee to repeal his Patent, who is Returned Warned, and makes Default, upon which Judgment is given againſt him. His Patent is by this annulled, made void, and of no Effect. D. 3. El. 198. 50. 37. D. 6 14.

3. *The King granted to A. B.* theſe Liberties, viz. *to be exempt from Juries and Inqueſts* &c. and *after all Franchiſes granted by this King were Re-*

pealed

pealed by Act of Parliament. Quære, if Liberties are Repealed by this Word Franchiſes? Br. Repellance &c. pl. 7. cites 34. H. 6. 25.

4. The Chancellor of England demanded of all the Juſtices, that Where *the Inheritance of the Crown of England, and of France, with all Pre-eminences and Prerogatives were given by Act of Parliament to H.* 7. and to the Heirs of his Body, *Whether the Liberties and Franchiſes were by this reſumed*; and they anſwered that it was not; the Reaſon ſeems to be inaſmuch as it *ſhall be intended ſuch Things were in the Crown at this Time*, and not thoſe which other Men had by good Title. Br. Repellance &c. pl. 5. cites 1 H. 7. 13.

5. 34 & 35 H. 8. 21. *Provides that (notwithſtanding this Act) the King's Grants of Offices, and their Fees for keeping of Caſtles, Houſes, Parks, Chaſes, Foreſts, or Block-Houſes, ſhall be void, when the Cauſe of exerciſing ſuch Offices is determined.*

(X. b. 2.) Patentee. *Ouſted How.*

WHERE the *King is intitled by Office to a Ward*, or ſuch like, and *grants the Land* over by Patent, and *during the Nonage one* comes and *traverſes the Office, or makes Petition, and this Matter is found for him*, Scire facias ſhall be awarded againſt the Patentee, to ſay why the Party ſhould not have Execution; And ſo ſee that the Patentee ſhall not be ouſted without being warned by Scire facias. Br Scire facias. pl. 156. cites 37. Aſſ. 11. Br. Petition, pl. 17. cites S. C.

2. If the *King cauſe his Valect to be admitted to a Corody in an Abbey, of which he is not Founder in Jure Coronæ*, by which the Abbot ſues by Petition, and upon the Matter diſcharges the Corody, he ſhall have Scire facias againſt the Valect to remove him, though the Name of Valect be not named in the Petition; Per Juſticiarios; *But in a Petition of Land he ſhall not have Scire facias againſt the Tertenant for Term of Life of the Leaſe of the King* &c. *unleſs he be named in the Petition*; For *it ought to appear in the Petition in whom the Franktenement is*; quod nota, the Difference; For there the Land is demanded; But in the other Caſe the Corody is not in Demand, but it is to diſcharge the Corody. Br. Scire facias. pl. 169. cites 5 E. 4. 122.

(X. b. 3.) Patents Repealed. *Pleadings.*

1. AN *Office found, That M. the Tenant of the King died ſeiſed, his Heir within Age*, and the *King granted the Ward* to W. and the *Feoffees traverſed the Office, that the Tenant infeoffed them, Abſque hoc, that he died ſeiſed*, and had Scire facias againſt the Grantee to repeal the Patent, who came and ſaid, That *another Office* is *found that the Feoffment was by Colluſion to toll the King of the Ward*, and demanded Judgment, if he ſhould be anſwered to the Scire facias this Office not being traverſed, & non allocatur, becauſe it was found pending the Writ; But yet the Defendant was ſuffered to plead the ſame Matter to ſave his Patent; and ſo he did, and ſaid, That the Feoffment was by Colluſion &c. and thereupon were at Iſſue. Br. Scire facias, pl. 79. cites 11 H. 4. 80. Br. Traverſe de Office. pl. 11. cites 21 E. 3, 2.

2. Where the *King has a Manor in Ward*, which is *known by the Name of the Manor of B. and of the Manor of S.* if he *grants the Cuſtody of the Manor of B.* to one, *and after* grants *the Cuſtody of the Manor of S. to another*, Br. Scire facias pl. 176. cites S. C.

other, and he ouſts the firſt Grantee, and he brings Scire facias to repeal the Patent, he *ought to ſurmiſe, That the Manor of S. and B. are all one* &c. ſo that it may appear, that the Patents are of one and the ſame Thing; For if they are *of divers Things Aſſiſe lies*, and *not Scire facias.* Br. Patents, pl. 63. cites 8. E. 4. 6. per Markham and Choke.

3. Where Scire facias iſſues at the Suit of the King, *the Cauſe of the Forfeiture of the Thing is touched in the Writ*; But *otherwiſe* in other Scire facias's ſued *by one Patentee againſt another.* D. 198. b. pl. 50. And vide Ibid 197. pl. 45.

(Y. b.) *What* ſhall be [ſaid to be *a*] *Grant againſt* the *Law.*

1. **If the King grants to another** that he ſhall not be puniſhed for any Felony which he ſhall do in the Time to come, **this is void; becauſe it is againſt common Right and Juſtice.** 19 H. 6. 62. b.

So if the King *grants to J.N that I ſhall not have Action againſt him, wherehe is indebted to me*, this Grant is not good; per Cott. Juſtice. Br. Patents. pl. 15. cites. cites 8 H. 6. 19.

2. So **it is if he grant that he ſhall not be puniſhed** for any Treſpaſs **which he ſhall do hereafter.** 19. H. 6. 62. b.

Grant by the King, *that a Man ſhall not be impleaded* is void. Br. Juriſdiction. pl. 39. cites 8 H. 6. 18. S.P. Br. Patents. pl. 15. cites 8 H. 6. 19.

S. P. Noy in the Caſe of Andrews v. Webb.

3. **The King cannot grant to any** to hold a Court of Equity; **Becauſe this is in Derogation of the Common Law.** Hob. R. 87, 88. **between** *Martin* **and** *Marſhall.* **Not** to the Queen.

Br. Juriſdiction, pl. 39. cites S.C.

4. Treſpaſs of Goods carried away againſt T. C. who pleaded to the Juriſdiction, becauſe he is Chancellor of Oxon, and *H.* 4. *granted to* J. K. *Chancellor of Oxon.* and his Succeſſors, *that they ſhould not be impleaded by Writ of Treſpaſs, nor Contract for Things done by their Office*, and ſhewed that *he diſtrained by his Office for not making of a Pavement*; and the Opinion of the Court was, that the Grant is not good; For it is *contrary to Law and Juſtice*, that a Man ſhall not be impleaded in any Place. Br. Patents, pl. 15. cites 8 H. 6. 19.

5. *And* alſo the ſaid T. C. came, and ſaid that he is Chancellor of *Oxon.* and that King R. 2. had granted to J. K. Chancellor, and his Succeſſors, that they ſhould have *Connſance of all Pleas moved in Curia Regis, whereof the one Party was Clerk of the Univerſity, and abiding there*, and ſaid that he is Clerk, ſcilicet Doctor of Divinity, and abiding there, and prayed the Conuſance; and by the Opinion of the Court he ſhall not have it, becauſe he is Party, and cannot be indifferent in his own Caſe. And per Martin and others, the Grant is not good, unleſs it were *licet idem Cancellarius fuerit Pars*, and if it had thoſe Words, yet it is not a good Grant, unleſs the Grant be alſo, *that then he may make a Deputy or conſtitute another Man to be Judge*; For he himſelf cannot be Judge and Party by theſe Words (licet fuerit pars) and the other Juſtices in the ſame Opinion. Br. Patents. pl. 15. cites 8 H. 6. 19.

6. A Man has Liberty to ſue where he will, but the King may prohibit him of it; As if he grants to J. S. *that of all Treſpaſſes done in his Manors the Plea ſhall be before him*; Per Babington Ch. J. Ibid.

Brook ſays, And *ſo* ſee that the King *cannot alter a Law by his Grant*, and yet he may grant

7. Where *Rape is made Felony by Statute*, it is not inquirable as Felony unleſs before Juſtices who can hear and determine Felony; the King *cannot make it inquirable in Leet* by his Grant, *nor grant the Leet to be of other Nature than at Common Law.* Br. Patents, pl. 53. cites 6 H. 7. 4. by the Juſtices.

Conuſance of Pleas, but *not to alter the Nature of the Plea nor* the Nature of a Court. Ibid.

8. It

8. It ſeemed to ſome, that *by Common Law* the King might *prohibit the importing Goods*, and that for doing contrary to ſuch Prohibition *the Ship ſhould be forfeited*; But this Law is *altered by ſeveral Statutes*, viz. 11 *R.* 2. 11. 25 *E.* 3. 2. *&c.* But Quære if the King makes ſuch Grant *with ſpecial Non Obſtante* of thoſe Statutes. Sid. 441. Hill. 21 & 22 Car. 2. B. R. in Caſe of Horne v. Ivy.

9. The King by his Patent cannot grant *that a Subject's Goods ſhall be forfeited* by his doing a Thing which his Patent prohibits. Sid. 441. Mich. 21 & 22 Car. 2. B. R. Horne v. Ivy.

See Vent. 41 Contra per the Ch. J. Mich. 21 Car. 2. S. C.

(Z. b) Grant of the King *limited.* [*By Reference to Words &c.*]

See (I. b) — (K. b) — (L. b) — (A c) to (E c) and (R. c)

1. IF the King grants the Manor of D. **to J. S. and his Heirs,** and within the ſame Manor to have Waifs, Strayes, Bona & Catalla Felonum &c. dicto Manerio ſpectant. & pertinent. **Thoſe Words,** Dicto Manerio ſpectant. & pertinent. **do not refer to the Goods of Felons or other Franchiſes which lie in Point of Charter which cannot be by any Uſage or Time appendant or appurtenant to a Manor; But they ſhall paſs by this Grant, tho' they were not ever demiſed or uſed with the Manor. Co. 9. Ab. Stra. Mar. 27. b. per Curiam.**

Jenk. 325. pl. 40. — S. C. cited 2 Mod. 107.

2. If a Portion of Tithes in Lougham appertaining to the Rectory of **Greſenhall which was a Rectory Preſentative,** and all the other Tithes were Parcel of the Rectory of **Lougham, which was appropriated to the Abby of D. which came to the King by the Diſſolution of the Abby, and the** King grants * totam illam Portionem Decimarum & Garbarum ſuarum in Lougham in Com. Norfolk, cum omnibus aliis Decimis ſuis quibuſcunque in Lougham in dicto Com. Norf. tunc vel nuper in Occupatione Johannis Corbet, **where in Truth** John Corbet never had any **Tithes in Lougham in his Occupation. This Grant is utterly void; For the laſt Words in the Occupation of John Corbet refer to all the Sentence, as well to the firſt Words as to the ſecond Words, and here a Portion of Tithes in groſs was intended to be paſſed and not All the Rectory, and here all ought to paſs or nothing. Co. 4. *Bozoun* 34. b. reſolved.**

Godb. 35. Mich. 27 Eliz. S.C. by Name of Futter v. Boroome.

* Fol. 193.

3. If two Rectories appropriate in one Church in one Pariſh **comes by 31 H. 8. to the King by the Diſſolution of a Hoſpital to which it was appropriated, and the** King grants this by the Name of a Rectory, but before this Grant in the ſame Patent **there** is a general Grant of all the Lands and Hereditaments which ever belonged to the Hoſpital, and the Hoſpital itſelf, and after the Grant of the Rectory **there** is alſo a general Grant of all **Lands,** Tithes, and Hereditaments in the Vill, where thoſe Rectories lie, at any time to the ſaid Hoſpital **[belonging.] Tho' the Grant be void in the Grant of the Rectory, it being two Rectories, yet the general Words ſhall paſs it. Mich. 15 Car. B. R. per Curiam, reſolved upon Evidence upon Trial at Bar, which concerns Mr. *Stroughton* for the Rectory of Mourton in Com. Warwick, which came to King H. 8. by 31 H. 8. by the Diſſolution of the Hoſpital of St. John's in Warwick to which it was appropriated.**

(L. b) pl. 6. S C -- ſo. 446. Stoughton v. Palmer. S. C.

4. Ed. 6. being ſeiſed of the Rectory of D. in Hampſhire, granted it to B. by theſe Words, *Totam illam Rectoriam de Dale, ac omnes Decimas &c. Quæ quidem omnia & ſingula Præmiſſa modo extenduntur ad* verum valorem de 32 *l. per Annum.* At the Time *when this Grant was made, there was a Farm* in the Pariſh, *which, with the Tithes* thereof, *was in*

Leaſe made by the Abbot Anno 16 *H.* 8. *reſerving Rent, which continued till the* 16 *Eliz.* And the Queſtion was, Whether the Grantee of the Rectory, after the Expiration of the Leaſe, ſhould have the Tithes of this Farm? And adjudged, That he ſhould; For tho' the Words (Quæ quidem omnia) in the Grant refer to the Value of the other Tithes and not to thoſe of the Farm, (becauſe they were then ſuſpended by being in Leaſe with the Farm), and probably the King intended to grant no more than Tithes of that Value expreſſed in the Grant; yet *by the* General *Words* of *Totam Rectoriam, the Tithes of this Farm will paſs*; but otherwiſe, if there had been any ſpecial Words. 2 Roll. Rep. 118. Mich. 17 Jac. B. R. Dixon's Caſe.

See (I. b)—(K. b)—(L. b)—(Z. b) (B. c)—(C. c)—(D. c) (E. c)

(A. c) What Things ſhall paſs by *General Words* [*of Reference to former Grants.*]

Gawdy and Popham held, That the Clauſe being general, of all Liberties and Privileges &c. it is to be intended of ſuch Liberties and Privileges which the Dean and Chapter had and were not reſumed by any Statute But this Liberty to be diſcharged of Purveyance was reſumed by the Statute 27 H. 8. wherefore it ſhall not be revived by General Words, but by a ſpecial Grant of thoſe Liberties by expreſs Name with an expreſs Non Obſtante of that Statute, ſo that it might appear that the King intended to grant them notwithſtanding that Statute. Cro. E. 512 Lord Darcy's Caſe. S. C.

1. **The Dean and Chapter of P. were ſeiſed of diverſe Manors in Eſſex in Fee, and in the 1 E. 4. the King granted to them and their Succeſſors, that they** ſhould be diſcharged of all Purveyors of the King in their Manors in Eſſex, **and after by** 27 H. 8. cap 4. **it was** enacted, that the Purveyors of the King might purvey **in all for the Proviſion of the King,** as well within Liberties as without, notwithſtanding any Grant to the contrary, **and after in** 35 H. 8. **the Dean and Chapter** ſurrendered thoſe Manors to the King **his Heirs and Succeſſors, and** afterwards the King granted thoſe Manors **to the Anceſtor of the Lord Darcy** with tot tales tantas & hujuſmodi Libertates, as **the Dean and Chapter or any of their Predeceſſors** habuerunt, aliquo Statuto Non Obſtante. **In this Caſe, in as much as the ancient Liberties were extinct by the Statute, this General Grant ſhall not create de Novo the ſaid Liberties which the Dean and Chapter had before. Tr.** 38 **El. B. R. adjudged. Vide, that by the Surrender to the King they were extinct if they had not been extinct before.**

S. C. cited as agreed in the Exchequer about 20 Eliz. Cro. E. 513 in the Lord Darcy's Caſe.

2. **The Biſhop of Coventry, among other Liberties,** had a Liberty de Catallis Felonum **within his Manor of B. and after this Manor came to K.** 8. **by Attainder, and he granted it over with** tot tales tantas & quales Libertates as **the Biſhop or his Predeceſſors had. The Grantee ſhall not have by this Grant the ſaid Liberties which the Biſhop had. For when they are** once extinct, Words of Reviver **will not be ſufficient, but there ought to be** Words of Grant, **and ſuch general Grant will not be ſufficient.** 25 **El. in Scacc. Lord** *Paget's* **Caſe, per Curiam, cited per Coke** 38 **El. B. R. Quere.**

3. Where the Vill of L. claims Liberties by Grant of the King, by theſe Words *ſuch Liberties and Franchiſes as the Vill of N. has* &c. they ought to ſhew *Record or Preſcription proving what Liberties* and Franchiſes *N. has*, and then it is well as it ſeems there. Br. Patents, pl. 31. cites 20 E. 3. and Fitzh. Avowry 129.

S. C. cited Pl. C. 12. in Caſe of Reniger v. Fogoſſa.

4. If Garter dies, and the King grants the *Office with ſuch like Fees* and Wages *as Garter had*, this is a good Grant; per Choke; which was affirmed, that is to ſay, to have ſuch Fees as Garter had. Br. Patents, pl. 60. cites 5 E. 4. 8.

5. In

5. In Treſpaſs &c. the Defendant juſtified, for that Northampton is an ancient Town, and that King H. 7. granted to the Mayor and Burgeſſes a Fair to be held yearly upon the Feaſt &c. Cum omnibus Libertatibus &c. to the ſaid Fair belonging; Then he ſet forth, that W. R. at a Fair there holden, ſold a Cow to the Plaintiff, for which the Defendant demanded one Penny for Toll; and becauſe the Defendant refuſed to pay it, he as Bailiff diſtrained the Cow; Upon a Demurrer to this Plea, it was adjudged, That by the Grant of a Fair, Cum omnibus Libertatibus, Toll was not due nor demandable, becauſe it is not incident to a Fair; It is true, that ſuch Liberties which a common Perſon hath either by Grant or Preſcription, and which the King himſelf ſhould have throughout England, as *Waif*, *Eſtray*, *Wreck* &c. There if a common Perſon hath them by Grant or Preſcription, and they come to the King by Forfeiture or otherwiſe they are extinguiſhed in the Crown, and the Queen ſhall have ſuch Liberties by her Prerogative, and they cannot afterwards be granted but by a new Creation. But where a common Perſon hath Liberties, which the King would not have by his Prerogative, if ſuch common Perſon had them not, as *Warren*, *Park*, *Fair*, *Market with Toll* &c. if theſe come to the Crown, they are not extinguiſhed, but remain in Eſſe; For if the King ſhould not have them by this Means they would be loſt. Wherefore, abſente Clench, it was adjudged for the Plaintiff. Cro. E. 558. 591. Mich. 39 & 40 Eliz. B. R. Heddy v. Wheelhouſe.

6. The *King* was *Lord* Paramount, the *Abbot* of Weſtminſter *was meſne, and C. was Tenant* of the Manor of R. The *Tenant was attainted of Treaſon*, and after *Office found*, the *King granted the Manor* to Sir J. M. and his Heirs, *to hold de nobis* & Succeſſoribus noſtris, and other chief Lords of the Fee, *per Servitia inde debita* &c. It was inſiſted, That the Tenure ſhould be of the King, becauſe the Meſnalty being extinct by the Attainder of the Tenant, (for where there is no Tenant there can be no Meſne) there could not be any Services due to him; But adjudged, That the Words are ſufficient to create a Tenure in the Meſne as it was before the Treaſon; For ſuch was the King's Intention; and it is conſonant to Equity, that he who never offended ſhould not loſe his Services, and therefore the Grant ſhall be taken beneficially for the Honour of the King and the Relief of the Meſne, and the Word Tenendum cannot have any other reaſonable Conſtruction. 6 Rep. 5. b. Hill. 40 Eliz. in the Exchequer, Sir John Molyn's Caſe.

(B. c) Grants of the King. [*To what the Words ſhall extend.*]

See (I. b) — (K. b) — (L. b) — (Z b) — (A. c) — (C. c) — (D. c) — (E. c)

1. **IF the King grants to another** All Iſſues, Forfeitures, Fines, and Amercements of his Tenants, **and a Tenant, who holds of the Grantee** and of another, * **be amerced, the Grantee ſhall not have this Amercement, becauſe he is not** his ſole Tenant. 22 Aſſ. 49. **per Richm.**

Br. Patents, pl. 32. cites S. C. —— * Fol. 194. —— S. P. Br. Grants 146. cites 2 R. 3. 4. But he ſhall have Fines and Amerciaments of thoſe who *held of Him Only.* —— But Br. Patents, pl. 90. cites 2 R. 3. 4. Contra, that he ſhall have it of thoſe who hold jointly of him and of others, as it was ſaid. But Brooke makes a Quære. —— Where the King grants *Fines and Amerciaments* to J. N. in his Manor of D. and he does *Treſpaſs*, there he ſhall not have Fines and Amerciaments depending upon it. Br. Grants, pl. 31. cites 21 E. 3. 3, 4 —— The King's Grant to A. of all *Fines and Amercements to the Tenants of A.* does not paſs *Fines and Amercements impoſed in the King's Bench, Common Pleas, or Exchequer*, nor before Juſtices of *Gaol Delivery*, Juſtices *of the Peace*, *or*

or Clerk of the Market, upon any of the King's Officers who are Tenants to A. For theſe Fines are Royalties, and ought to have ſpecial Words to paſs them. Jenk. 103. pl. 100. cites D. 268. 2 H. 7. 7. 22 Aſſ. 49.——*So where* there are Tenants of A. and *a Fine or Amercement is aſſeſſed upon one who is Tenant both of the King and A.* this Fine &c. does not paſs *without ſpecial Words* to grant the Fines and Amercements *Integre Tenentium & Non integre Tenentium.* Jura Regis ſpecialia non conceduntur per Generalia Verba. Jenk. 103. pl. 100.

2. **If the King grants** all his Lands and Hereditaments of ſuch a Priory in ſuch a City, a Mill whereof the King is ſeiſed with other Lands Parcel of the Priory ſhall paſs **by thoſe general Words, tho' a Will ought to be demanded in a Writ by ſpecial Name. H. 37 El. B. R. per Curiam.**

D. 350 b. pl. 21. Paſch. 18 Eliz. Caſe of the Rectory of Weſt Bodwin.

3. So **if the King grants** all his Lands, Tenements and Hereditaments in D. the Advowſon of the Vicarage ſhall paſs **by it. H. 37 El. B. R. in the ſaid Caſe held.**

——Bendl 252. S. C.——S. C. cited 10 Rep. 65. b. in Whiſtler's Caſe.——In Quare Impedit, where the *King, ſeiſed of a Manor with Advowſon Appendant, grants the Manor without ſpeaking of the Advowſon*, the Advowſon does not paſs; *but* where it is appendant, and the King grants *the Manor, Habend. una cum the Advowſon*, this paſſes well; for it is appendant. Br. Patents, pl. 29. cites 38 H. 6. 34. 35.——*Contra*, if it was Advowſon *in groſs*; for there the Grant is void as to the Advowſon, unleſs it be *expreſs'd as well in the Grant as in the Habendum.* Br. Patents, pl. 29. cites 38 H. 6. 34. 35.

Dav. Rep. 16. a. Mich. 5 Jac. B. R. S. C. in the Caſe of Cuſtoms. And it was alſo reſolved by the Lord Ch. Baron, and other Referees here in England, that the ſaid Grant (that

4. **H. 2. granted to the Burgeſſes of Dublin** Quod ſint quieti de Theolonio **Paſſage Pontage,** & omni Conſuetudine per totam Terram **noſtram Angliæ, Normaniæ, Walliæ & Hiberniæ,** Ubicunque venerint ipſi & res eorum. **Tho' the Citizens have been always ſince this Grant till this Day exonerated of the Great Cuſtom which is called** Magna Antiqua Cuſtuma in Anglia, & Magna Nova Cuſtuma in Hibernia, **yet they ſhall not be diſcharged of the ſaid Cuſtom by this Charter; for the Words (Theolonium & Conſuetudo) may be applied to diverſe Things; and** where the Words in the King's Grants may be applied to diverſe Things, they ſhall not be extended to **the ſaid Grand Cuſtom, which is** the ancient Inheritance of the King, **by any Uſage whatſoever. H. 16 Ja. Scacc. Reſolved. Quere.**

they ſhould be Quieti de omni Conſuetudine) did not diſcharge them of the Grand Cuſtom; becauſe Conſuetudo eſt Nomen æquivocum, and ſignifies ſeveral Kinds of Cuſtoms; and ſo, being a general Word, ſhall never paſs this ſpecial Royal Duty.——*So* where the King granted to the Burgeſſes of Drogheda, That they ſhould be diſcharged De Theoloneo, Paſſagio, Pannagio, *Laſtagio* &c. And it was reſolved by the Ch Baron, and other Referees in England, that by Force of this Word (Laſtagio &c.) they ſhould not be diſcharged of the Grand Cuſtom of 13 s. 4 d. payable for every *Laſt of Hides*, becauſe there is a Laſt of *Herrings* and a Laſt of *Powder*, *and* of *ſeveral other Things as well as of Hides.* Dav. Rep. 17. a in the Caſe of Cuſtoms.——*But* where H. 5. granted to the Mayor, Bailiffs and Citizens of Waterford in Ireland, *Cuſtumam* dictæ Civitatis *vocatam le Cocquett* capiendum per Manus dicti Majoris & Ballivorum in perpetuum. And it was reſolved that the Ancient Cuſtom of Wool, Woolfels and Hides, was well granted to the ſaid Corporation by the Words of (Cuſtome Vocat. le Cocquett;) for this ancient Cuſtom is commonly called and known by the Name of the Cocquett Cuſtom in all Ports of England and Ireland: And (Cuſtuma dictæ Civitatis) ſhall be intended Cuſtom payable for Merchandizes in dicta Civitate; for favourable Interpretation ſhall be made of ſuch Grants, according to the Uſage and Allowance. Dav. Rep. 14 a. Mich. 5 Jac. B. R. in Ireland, in the Caſe of Cuſtoms.

S. P. Pl. C. 333. in the Caſe of Mines.

5. Preſentment was made againſt an Abbot for *ſuffering a Bridge to fall, which he and his Predeceſſors Lords of the Vill had uſed to repair* Time out of Mind. The *Abbot pleaded the Charter of H. 3. to be quit of Reparation of all Bridges*, Walls and Cauſways, and that this Charter had been allowed in Quo Warranto &c. yet this Plea was not allowed; for this was a *ſpecial Charge* or Duty *by Reaſon of his Seigniory*, which is *not diſcharged by this general Clauſe*; for where there are *Words in the Grant of the King, which under a general Name comprehends Things Royal, and Baſe Things, it ſhall be taken in Favour of the King, and the Baſe Things ſhall paſs, and the Royal Things ſhall remain in the Crown. Dav. Rep. 17. cites 3 E. 3. Fitzh. 445.

6. If

6. If the King grants *Fines and Amercements in D.* this will not ſerve for Fines *Pro licentia Concordandi*, as it is ſaid there. Br Patents, pl. 107. cites 44 E. 3. 28.

Br. Conuſance, pl. 12. cites S. C. — S. P. Tho' the Grant be his Prerogative. 2 Inſt. 515 ——King E. 4. granted to the Dean and Chapter of Paul's *all Fines pro licentia Concordandi* of all their Homagers and Tenants, Reſiants and Non-reſiants within their Fee; Gawdy J. held, that this Grant did not *extend to the Poſt-fines*; for Fine pro licentia Concordandi is the Queen's Silver, and not the Poſt-Fine. But Wray held that all ſhall paſs by it; for it is about one and the ſame Matter, and they were of Opinion to give Judgment for the Plaintiff. 1 Leon. 249. pl. 388. Paſch. 32 Eliz. Strait v. Bragg.

7. Note, by the Opinion of the Court, that by Grant of *Conuſance of Pleas, and of Executions of it*, a Man cannot *levy Fines, nor bring Writ of Right, and make Proteſtation in Nature of Writ of Covenant.* Per Perſey, It is uſual to levy a Fine in Ancient Demeſne in E. by Bill of Covenant; Per Knivet, non valet; for a Man can't by Proteſtation in Writ of Right change this to a perſonal Covenant, and yet the Grant was Quod habeat *executionem omnium placitorum, & quod in omnibus actionibus placitari poſſint per Breve de Recto patent' or to make Proteſtation in Natura cujuscunque Brevis.* And yet by the Opinion of the Court, he *cannot levy Fines without expreſs Words* of it; therefore quære, and it ſeems that ſuch Matter ut ſupra does not lie in Grant. Br. Fines, pl. 22. cites 44 E. 3. 38.

It is ſaid in the Books, That if a City or Town Corporate have uſed Time out of Mind to *hold all Manner of Pleas, as well Real as Perſonal*, or has any ſuch Franchiſe by Grant of the King, that yet they cannot levy Fines. But Brook ſays, That if they have *uſed to levy Fines*, it is good enough. But Coke ſays, That he cannot ſee how ſuch Fines can be good; for it is expreſsly againſt the Statute of *Modus levandi Fines*, which *provides that no Fines ſhall be levied but only in C B. or before Juſtices of Oyer*; ſo that none can be levied elſewhere, unleſs eſpecially given by Statute, (as he thinks) as Fine cannot be levied in *Ancient Demeſne*, for the Cauſe aforeſaid, and becauſe it is no Court of Record; but they may be levied within the County Palatine of *Lancaſter* or *Cheſter*; but that he apprehends to be by diverſe Acts of Parliament. And it may be *in Cities and Towns Corporate, where they have uſed to levy Fines, if all their Uſages and Cuſtoms are confirmed by Act of Parliament*, they may levy Fines there; but that ſuch Fines ſhall not bar any Eſtate Tail, nor any Strangers who have preſent or future Right. Co. R. on Fines 9.

8. Grant was made to John of Gaunt Duke of Lancaſter of *all Strays within his Fees*, and a Prior of Spalding *held of the Grantee certain Lands in B. in Frankalmoign*; and a Stray came there, and the Grantee claimed it by his Grant: And the beſt Opinion was, that he ſhall have it; for he has Tenure there, and therefore has Fee there; for if the Houſe be diſſolved, he ſhall have the Eſcheat, and the Tenant may have Writ of Meſne, or Ne injuſte Vexes. Br. Patents, pl. 61. cites 7 E 4. 11.

9. By Grant of *Tenere placita*, a Man ſhall not have Conuſance of Pleas. Br. Patents, pl. 4. cites 9 H. 6. 27.

Nor by this Word *Placitum* a Man cannot have *Aſſiſe*; for it is *Querela*. Ibid.

10. Treſpaſs upon the Caſe, where the King *granted* to J. Biſhop of Sarum and his Succeſſors *certain Liberties in all his Lands and Fees*; this *ſhall not extend but to thoſe Lands and Fees which he had at the Time of the Grant.* But per Billing and Priſot, if the Grant be *in all his Lands, and in Lands to be purchaſed by him or his Heirs*, this ſhall extend to his Land which he had at the Time of the Grant, and to Land which he or his Heirs ſhall purchaſe hereafter. Br. Patents, pl. 28. cites 38 H. 6. 10.

And grant to me and my Heirs *to be quit of Tax and Toll* is good, tho' *no Tax or Toll be in Eſſe at the Time.* Ibid.

11. If the King *grants to J. N. to amortiſe certain Land*, yet if he gives *Land held of the King in Capite* in Mortmain, the Land ſhall be ſeiſed for Fine for the Alienation; and therefore it *is uſed to put in* ſuch Patents now, [viz.] *tho' it be held of us in Capite.* Br. Patents, pl. 44. cites 2 H. 7. 13. Per Keble.

12. A. was Leſſee for Life of the Scite and Demeſnes of a Manor rendering Rent, the *Reverſion* thereof, and *of the* Reſidue of the *Manor, to the*

S. C cited Jenk. 303. pl. 77.

the King, who granted the Appurtenances to W. D. for Years, together with all Rents, Services, Profits and Hereditaments thereunto belonging; but did not expreſsly mention the Reverſion, nor was there any Recital of the Leaſe of the Scite and Demeſnes aforeſaid; but a Rent of 74l. was reſerved to the King upon the Leaſe of the Manor. By the beſt Opinion the Reverſion paſs'd by Name of the Manor. D. 233. pl. 10. Mich. 6 & 7 Eliz. Aprice v. Rogers, alias Sir Walter Dennis's Caſe.

13. King H. 8. granted to A. *Turbariam ſuam* in D. for 21 Years; the Grantee plow'd Part of it, and then Q. Mary granted to B. Totam illam Turbariam before demiſed to A. It was adjudged, that the plow'd Land did not paſs, but only that which was Turbary. Owen 67. 23 Eliz. C. B. Farrington v. Charnock.

As if *A gives the Manor of D. to B. in Tail*, and afterwards the *Donor is attainted of Treaſon*, by which the King is ſeiſed of the Reverſion, and afterwards by his Letters Patents *grants Manerium de D.* to another and his Heirs; in this Caſe, tho' the King grants the Manor of D. as in Poſſeſſion, yet the Reverſion ſhall paſs; for the King has an Eſtate (viz. the Reverſion in Fee) grantable in him, and the Eſtate Tail by a Common Perſon, need not be recited. And this is not like to **Alton Mood's Caſe**; for the King was not Conuſant, nor informed of his true Eſtate, viz. that he was ſeiſed in Tail with the Reverſion expectant to his Heirs and Succeſſors; and his Grant in the ſame Caſe cannot take Effect without Fraction of Eſtates, or doing a Tort, and therefore not like to the principal Caſe; for here the Party hath informed the King of the Truth of all Matters of Fact, viz. of the Eſtate Tail, and of the Delivery of the former Patent; ſo that in true Judgment of Law upon the Matter contained in the Patent, the King has only Reverſion in Fee expectant upon Eſtate Tail. And in this Caſe no Tort is done to any, nor is there any Fraction of Eſtates; and here the *Intention of the King was to depart with all his Eſtate, and leſs ſhall paſs by this Grant (viz. the Reverſion) than he intended* to paſs; *for he intended to paſs the Poſſeſſion, and ſo he is not at any Prejudice.* But if more ſhould paſs than he intended, As where he intended to paſs only a Reverſion, and there a Poſſeſſion ſhould paſs, in ſuch Caſe it would be otherwiſe; Beſides, this Grant being made Ex certa Scientia & mero Motu, ſhall be taken in the moſt benign and liberal Senſe, according to the King's Intention and Meaning expreſs'd in his Grant. 6 Rep. 56. S.C.

14. The King *granted the Manor of B. to J. S. in Tail* Male, and afterwards *by another Patent, reciting the former, and the Surrender thereof &c.* De Gratia ſpeciali, ex certa Scientia &c. he *re-granted the ſaid Manor to the ſaid J. S. and M. his Wife, and to the Heirs of the ſaid J. S.* It was reſolved, that by the Grant of the Manor without the Word Reverſion, the Reverſion paſs'd; for the Word *Manor includes all Eſtates* and Degrees of Eſtates of, or in the Manor. 6 Rep. 56. Trin. 4 Jac. Lord Chandos's Caſe.

Patent exempting from all tolls & impositions will not except from prisage of wine; nor even the word prise? Hale on Customs 129. 130.

See (I.b.) (K.b.) (L.b.) (Z.b.) (A.c.) (B.c.) (D.c.) (E.c.)

(C. c.) Grant of the King. [What ſhall *paſs by general Words.*]

What he can grant only by his Prerogative

1. THE Right of the King **ſhall not paſs** by general Words. 8 H. 4. 2.

can never paſs by general Words; and therefore *Choſes in Action* will not paſs without ſpecial Words. 12 Rep. 2. Paſch. 4 Jac. Ford v. Sheldon.

Br. Forfeiture de Terres, pl. 11.

2. **By a Grant de** Bonis & Catallis felonum, **Goods of a** Felo de ſe **ſhall not paſs.** 8 H. 4. 2.

cites S. C. Per Till.——S.P. Nor *Debts* of Felons. Vent. 32. Anon.——Saund. 275. The King v. Sutton.——Le 99. Arg.——Roll R. 399. The King v. the Biſhop of Durham.——Sid. 142. Southampton (Mayor) v. Richards.——Nor *Obligations*; Per Shute, Owen. 155. 30 & 31 Eliz. in Caſe of Biſhop of Canterbury v. Hudſon, cites 19 H. 6. 42.—*Unleſs by ſpecial Words.* 2 Le. 51.——Nor thoſe *Goods which the Felon has ſtolen*, but only his own proper Goods. Per Coke C. J. 3 Bulſt. 148. in Prinſton's Caſe——12 Rep. 73. S. P.—Jenk 325. pl. 40.——But ſuch Grantee ſhall, without Doubt, have the ready Money; for *ready Money* may be granted by that Name, tho' not demanded by the Name of Bona. 2 Show. 133. Mich. 32 Car. 2. B. R. Anon.

The Admiral in his Patent has granted to him *Bona Piratarum.* Reſolved by all the Judges, that the *Goods of Pirates* paſs by this Grant, and *not piratical Goods.* Jenk. 325. pl. 40.

Quære,

Quære, If the *Preſentation of a Church*, which becomes vacant during an *Outlawry* of the Patron, ſhall paſs by the Words in a Grant of Bona & Catalla Felonum Fugitivorum & Utlagatorum. Walmeſly and Periam were of Opinion that it would paſs, but Shute and Anderſon econtrá. Owen 155. The King v. the Archbiſhop of Canterbury & Hudſon.

3. Nor of a Clerk convict. 8 H. 4. 2. Br Forfeiture de terres. pl. 11. cites S. C. Per Till.

4. Nor of one who is put to Penance. 8 H. 4. 2. S P. Raym. 242. cites S. C. — S. P. Unleſs in a County Palatine. Per Coke, Ch. J. 3 Bulſt. 156. in Caſe of the King v. the Biſhop of Durham. — D. 268. b. pl. 18. Quære. — They will not paſs unleſs there are Words ſpecially extending to the Goods of ſuch; becauſe one adjudged to his *Penance* for ſtanding mute, does *not ſeem to ſuffer as a Felon*, being neither attainted nor convicted of any Felony, but as a Perſon refuſing to ſtand to the Law of the Land. And it ſeems rather the ſtronger Opinion, that they paſs not by the Grant of all *Goods of Felons and Fugitives, of all Perſons within ſuch a* Diſtrict; ſo that if ſuch Perſon for any Treſpaſs, or other Fault, ought to loſe Life or Member; or ſhall fly and refuſe to ſtand to Judgment, or do any other Treſpaſs for which they ought to loſe their Chattels. 2 Hawk. P. C. 3. 31. cap 30. S. 21.

5. By a Grant of the Goods Eorum qui pro aliquo Delicto Vitam vel Membrum amittere debeant, the Goods of one who is put to Penance ſhall not paſs. 8 H. 4. 2. Dubitatur. In Appeal the Defendant was adjudg'd to Penance for ſtanding Mute, and he had Goods, and the Biſhop of L. claim'd them by Grant of the King, that he ſhould have *Catalla Felonum & Fugitivorum de omnibus Hominibus & Tenentibus in terris ſuis, & de omnibus Reſidentibus in terris prædictis. Ita quod ſi prædicti homines tenentes aut reſidentes aut eorum aliquis in terris prædictis pro aliquo Delicto aut Tranſgreſſione vitam vel membrum amittere debeant aut debet, aut fugerint vel fugerit, aut judicio ſtare noluerint aut noluerit, vel aliquam aliam Tranſgreſſionem fecerint pro qua ipſi catalla perdere debeant in quocunque loco Juſtitia de eis fieri debeat ſive in curia noſtra ſive in alia curia ipſa catalla ſint ipſius Epiſcopi & per Miniſtros ſuos in manibus ſuis ſeiſiri poſſint ſine clameo fiend'.* And by Gaſcoin, Tirwit, and others, the Biſhop ſhall not have the Goods, for the *Felon was not judg'd for the Felony, but for the Contempt*, and ſhall not paſs from the King by ſuch general Grant; for if a Man commits *Treaſon*, there the Biſhop ſhall not have the Forfeiture. But Huls, Skrene, and others, to the contrary, for he loſes his Life by this Judgment, therefore the Biſhop ſhall have the Goods. And by the Statute of Weſt. 1. c. 12. If a Man ſtands mute in Appeal, he ſhall be convicted and ſhall forfeit his Goods as non Defendendo, and the Statute gives no more but that he ſhall be put to Penance. But it was agreed by all, that the Goods are forfeited, & Adjornatur Br. Forfeiture de Terres. pl. 11. cites 8 H. 4. 1 & 2.

6. If the King grants all Forfeitures of the Tenants of the Grantee for any Treſpaſs or any other Offence, for which they ſhall loſe Life and Member, or aliquo alio Delicto for which they ſhall loſe their Chattels; yet Forfeitures for Contumacy, as Forfeiture of Goods upon Outlawry in Treſpaſs, ſhall not paſs thereby. 11 H. 6. 50. b. So Forfeiture of Goods upon Premunire.

7. The King may grant Iſſues and Amerciaments by general Words. 9 H. 6. 27. b. Br. Patents. pl. 4. cites S. C. — So of Grant *de Gattallis Felonum & Fugitivorum*. Br. Patents. pl. 4. cites S. C. — So of Grant *of Conuſance of Pleas in quibus cunque Curiis noſtris*. Br. Ibid. — If the King *grants to me all Fines and Amerciaments in the County of B.* and *I am amerc'd there*, I ſhall not have the Amercement; for it ſhall not be intended the Will of the King. Per Martin. Br. Patents. pl. 15. cites 8 H. 6. 19.

8. By ſuch Grant Forfeitures of Goods upon a Premunire for Non-appearance, by which the Party is put out of the Protection of the King, do not paſs. 11 H. 6. 50. b.

9. *Prerog. Reg. cap.* 15. 17 E. 2. *The King's Gift or Grant of Land or Manors cum pertinentiis conveyeth not Knight's Fees, Advowſons, or Dowers, without expreſs Words.* Where the King *has a Corody by reaſon of Patronage* of a Priory, and *grants the Patronage* to another, *without making mention of the Corody*, he who has the Patronage ſhall have the Corody; and the King cannot grant or give the Corody, by expreſs Words; nor the King cannot reſerve the Corody, where he parts with the Patronage. And ſo ſee a Thing cannot paſs from the King by general Words, and by reaſon of another Thing, without expreſs Mention. And other Things are at Common Law, as (Brook ſays) it ſeems here, and are not taken by Equity of the Prerogative, as is manifeſted by the Caſe of the Corody. Br. Patents. pl. 34. cites 26 Aſſ. 53. — 10 Rep. 64 b. in Whiſtler's Caſe, cites S. C. [but miſcites it, as 26 Aſſ. pl. (63) whereas it ſhould be as in Br. (53.)]

If

If the King grants to J. N. *Manor or Land* &c. and *does not make mention of* Fees of Knight and * *Advowſons*, there thoſe do not paſs; for they do not paſs without expreſs Words. Br. Patents. pl. 5. cites 41 E. 3 5 —— *But* where the King makes Livery to an Heir, or makes *Reſtitution* or Grant *of Temporalities* to a Biſhop, there thoſe paſs *without expreſs Words*. Note the Diverſity. Ibid.—— Br. Livery. pl. 20. cites S.C. & 21 E. 3. 40.—— Br. Livery. pl. 45. cites S. C. —— Br. Patents. pl. 75. cites S.C.—— * S. P. Per Weſton, J Pl. C. 243. cites Treatiſe of Prærogativa Regis. cap 15.

In Quare Impedit, the Caſe was, that *King* H. *before the Statute of Prerogative, granted a Manor to* J. N. *without expreſſing the Advowſon, and without ſaying Cum Pertinentiis* ; and yet by Judgment the Advowſon paſſes, becauſe it was appendant to the Manor ; but now by the *Statute of Prerogative*, Advowſon, Dower, Fees of Knight, do not paſs, unleſs expreſsly mention'd ; and that if *a Common Perſon* be ſeiſed of a Manor with Advowſon appendant, and grants the Manor cum Pertinentiis, the Advowſon paſſes. Br. Patents pl. 6. cites 43 E. 3. 22. —— Br. Prerogative. pl. 7. cites S.C. —— 10 Rep. 64 in Whiſtler's Caſe, cites S. C.

This Act is reſtrained only to theſe three Caſes of Advowſons, Knight Service, and Dower; for *Leet* ſhall paſs without expreſs Mention, or Words equipollent, as is held in 18 H. 6. 12. So of *Foreſt appendant to an Honour*, as is agreed in 26 Aſſ. 60. So of *Corody appendant to a Patronage* of a Priory, as appears in 26 Aſſ. 63. And the Words of the Act are *Quando Dominus Rex dat vel concedit*, and therefore in Caſe of *Reſtitution*, Advowſons &c. ſhall paſs without expreſs Mention of them, or Words equipollent, as in *Livery to the Heirs*. 2dly, In Reſtitution of *Temporalties to the Succeſſor of the Biſhop* &c. 10 Rep. 64. b. cites 41 E. 3. 5. b. 27 Aſſ. 48. Pl. C. in Lord Barkley's Caſe. 251, 252, 20 Eliz. D. 306. accordingly. But that Thorp, Ch. J. ſaid in the ſame Plea, That if a *Manor with Advowſon appendant* be *in the Hands of the King by Eſcheat or* by *Purchaſe*, if he at this Day (ſince the Statute of Prærogativa Regis) *gives it as entirely as J. S. held it before it came into our Hands by way of Eſcheat*, or *as J. S. held who enfeoff'd us* ; in ſuch Caſe, the Advowſon ſhall paſs without ſaying in the Charter Cum Feodis & Advocationibus, becauſe the Law in ſuch Caſe intends, that the King is appriſed of his Right. Quod Curia conceſſit.

10. If the King *grants a Hundred, which has a Leet*, to J. N. and *another Man has a Manor and a Leet in it within the Hundred*, if he makes *Hue and Cry* there &c. the ſaid J. N. ſhall not have the Puniſhment of it, but it ſhall be puniſhed in the Eyre. Per Wilby. Br. Grants. pl. 31. cites 21 E. 3. 3, 4.

Contra, where he makes Livery *at full Age upon Office upon Suit*,

11. In Quare Impedit, where the *King makes Livery to the Heir within Age*, there *Fees and Advowſons do not paſs*. Br. Livery. pl. 20. cites 21 E. 3. 40 & 41. E. 3. 5.

there they paſs by general Words ; but in the other Caſe, they do not paſs *without ſpecial Words* expreſſed. Note a Diverſity. Ibid. —— *So* in Quare Impedit, 41 E. 3. 5. Where the *King renders the Temporalties to a Biſhop elect before that he be ſworn*, Fees and Advowſons do not paſs without expreſs mention. Ibid. *Contra*, where he renders them *after the Conſecration* of the Biſhop. Ibid.

12. If the King grants *Returna omnium Brevium*, yet the Grante ſhall not have Return *of Exchequer Summons*. Br. Patents. pl. 32. cites 22 Aſſ. 49.

Jenk. 25. pl. 55. cites 26 Aſſ. 6. S.C.-- but it ſhould be (60) as in Br. —— Br. Incidents. pl. 11. cites S. C. —— 10 Rep. 64. b. Br. Corody. pl. 2. cites S. C. & 44 E. 3. 24.—— Br. Patents. pl. 8. cites 44 E. 3. 24. & 14 H. 6. 12

13. King H. was *ſeiſed of the Honour* of Pickering, *to which a Foreſt was appendant*, and the *King granted the Bailiwick* of it to one *in Fee, rendering Rent* ; and after he *gave the Honour cum Pertinentiis* to E. Earl of Lancaſter ; and by this the *Foreſt paſs'd, but not the Bailiwick nor the Rent* reſerved upon it ; for this was ſevered before from the Honour, and therefore cannot paſs as appendant ; *for it was in Groſs before*, and does not paſs unleſs by expreſs Words, Quod nota. Br. Patents. pl. 35. cites 26 Aſſ. 60.

14. The King is Founder of a Priory, and *confirmed to the Prior all his Poſſeſſions, Tenend. libere & quiete ab omnibus Placitis, Gildis, Tolnetis Querelis, Actionibus et Demandis, et ab omni Servicio et Exactione Seculari* &c. And notwithſtanding thoſe Words, he was charged of *Corody, Reaſonable Aids, and to repair Bridges and Cauſways* ; quod nota, that the general Words do not bind the King. Br. Patents, pl. 78. cites 50 Aſſ. 6.

15. In Treſpaſs, the Defendant juſtify'd by Grant of King R. 2. who granted *Bona & Catalla felonum & fugitivorum, & aliorum qui pro aliquo Delicto Vitam vel Membrum amittere debent ſeu pro aliquo alio Delicto, pro quo bona aut Catalla perdere debent in his Manor of* D. and one was outlaw'd of Treſpaſs, and he took his Goods ; and the beſt Opinion was, That he well might, by reaſon of theſe Words *(Delict' pro quo perdere debet Catalla ſua.* Br. Patents. pl. 86. cites 11 H. 6. 50.

16. A

16. A Rectory, to which an *Advowſon of a Vicarage* was *appendant* but the annual Revenues and Profits of them were *concealed*, *came to the Queen by the Attainder* of J. S. which being found by Office, the *Queen*, *for a valuable Conſideration*, *ex certa Scientia* &c. *granted* the Poſſeſſions of the Glebe, and Tithes of the Rectory, by ſpecial Names, and generally *omnia Hereditamenta* &c. belonging to the ſame, *not mentioning expreſsly* the Rectory or *Advowſon* of the Vicarage, *adeo plene* &c. as the ſaid J. S. had it, Et prout ad manus ipſius Reginæ devenerunt ſeu devenire debuerunt; with this Proviſo, That if the Premiſſes were not concealed &c. Adjudged, that by theſe Words the Advowſon of the Vicarage did paſs, and that the Queen was not deceived in her Grant, for want of Knowledge. D. 350. b. pl. 21. Paſch. 18 Eliz. * Anon.

The King had the Advowſon of the Vicarage of D. and granted *Vicariam ſuam de D.* The Advowſon of the Vicarage did not paſs. D. 350. b. Marg. pl. 21. cites Mich. 31 adjudg'd.

& 32 El. C. B. Denny v. Aſtill. —— * Bendl. 252 Blagrave v. Pierce and Shaw. S. C. S. C. cited Per Cur. 10 Rep. 65. b. in Whiſtler's Caſe.

17. The Queen *ſeiſed of the Manor of Gaſcoigne, and of a Grange called Gaſcoigne-Grange* in D. *granted all her Lands, Tenements, and Hereditaments in D.* Adjudged by the whole Court, That the Manor did not paſs. Godb. 136. pl. 159. Paſch. 28 Eliz. C. B. Giles v. Newton.

18. The Queen having the *Advowſon of the Vicarage of D. granted the Vicarage to B.* It was held, that the *Advowſon did not paſs*; for by her Grant nothing paſſes but what ſhe intended to paſs, and the Vicarage is a different Thing from the Advowſon, and every Thing muſt paſs by its proper Name; Nor ſhall it paſs in the Caſe of a Common Perſon. Cro. Eliz. 163. Mich. 31 & 32 Eliz. C. B. Anon.

19. The King granted to A. a *great Manor*, called an Honour, and paſſed it *by Name of an Honour*, and well. Jenk. 277. pl. 99. cites Pl. C. 311. The Caſe of Mines.

20. Jac. 1. granted to Sir R. M. and his Heirs, by Letters Patents, the Territory of Rout, which is Parcel of the County of Antrim, and adjoining to the River of the Banne in ea parte, where there is a *Piſchary of Salmons*; and the Grant was of *omnia Caſtra, Meſſuagia, Toſta, Molendina, Columbaria, Gardina, Hortos, Pomaria, Terras, Prata, Paſcua, Paſturas, Boſcos, Subboſcos, Reddit. Reverſiones & Servitia, Piſcarias, Piſcationes, Aquas, Aquarum Curſus* &c. *Ac omnia alia Hæreditamenta* in vel intra dict. Territorium de le Rout in Comitatu Antrim exceptis, et ex hac conceſſione nobis Heredibus et Succeſſoribus noſtris, *reſervatis tribus partibus Piſcationis fluminis de le Banne.* The Chief Judges being of Privy Council, upon View of ſeveral Pipe-Rolls, in which this Matter was found ſeverally in Charge as Parcel of the antient Inheritance of the Crown, and upon Conſideration had of the ſaid Patent, certified their Opinion and Reſolution, That *no Part of this ſaid Piſchary paſſed by the Letters Patents* aforeſaid. It was alſo reſolv'd, That no Part of this Royal Piſchary of the Banne could paſs by the Grant of the *Land adjoining*, by general Grant of all Piſcharies; for *this Royal Piſchary is not appurtenant to the Land, but it* is a Piſchary *in Groſs*, and Parcel of the Inheritance of the Crown by itſelf. And laſtly it was agreed, That where the King had granted to Sir R. M. all the Territory adjoining to this River, and all Piſcharies within this Territory, Exceptis tribus partibus Piſcariæ de le Banne, that the fourth Part of this Piſchary ſhall not paſs to him; for the *Grant of the King ſhall not paſs any Thing by Implication.* Dav. Rep. 55. a. to 57. b. Mich. 8 Jac. in Ireland. The Caſe of the Royal Piſchary of the Banne. —— alias Sir Randal Mac Donnell's Caſe.

21. General Words in a Grant of the King ſhall not paſs ſuch a *ſpecial Royalty as belongs to the Crown by Prerogative*; As Mines Royal, Amercements Royal, Eſcheats Royal, ſhall not paſs by general Words of All Mines, Amercements, and Eſcheats. Dav. Rep. 57. b. In the Caſe of the Royal Piſchary of the Banne.

S P. Dav. Rep. 17. a. Mich. 5 Jac. B. R. in the Caſe of Cuſtoms. —— —— S. P. Jenk. 304. pl. 77.

22. It was reſolved, that by a general Grant *of a Manor* (which had been forfeited to the King by Attainder of Treaſon) Cum Pertinentiis, *and of all his Intereſt, Claim, and Demand therein*, a Writ of *Error to reverſe a Common Recovery* (which had been erroneouſly ſuffer'd of the Manor) did not paſs, notwithſtanding the Clauſe *De ſpeciali Gratia &c.* For if the King could grant it, it muſt be by Virtue of his Prerogative, (for no common Perſon could do it) and then it ought to be by expreſs and preciſe Words. 3 Rep. 4. b. Trin. 25 Eliz. The Marqueſs of cheſter's Caſe.

23. If the King grants *Eccleſiam*, the *Advowſon paſſes*; For the Intent, and not the preciſe Words, are to be regarded in the Grant of the King. Per Jones, J. Lat. 248. Hill. 22 Jac. In the Caſe of Evans and Aſcough. — cites 7 E. 3.

24. Sir Francis Forteſcue *ſeiſed of a Manor granted it to the E. of Denbigh, except ſuch Lands as were then held for Life by Copy.* Afterwards *the Inheritance of this Copyhold was granted to the ſaid Earl*; The Copyholder dies, the *Earl granted again by Copy, and then forfeited all to the King.* The *King granted the Manor &c. and every Part or Parcel, or reputed Parcel thereof.* Lord Ch. J. North deliver'd the Opinion of the whole Court, that theſe Cophold Lands paſſed by the Words (Reputed Parcel.) And that in this Caſe, where the Jury have found the particular Matters, and thoſe Particulars are a ſolid Ground for a Reputation, the Court ſhall adjudge it Reputed Parcel, and ſo ſhall paſs by thoſe Words in the Grant of the King; and Judgment was given accordingly. Freem. Rep. 207. Paſch. 1676. C. B. Lee v. Browne.

See (I. b.) (K b.) (L. b) (Z. b) (A. c) (B. c) (C. c) (E. c)

(D. c.) Grant of the King [*by general Words; and what paſſes.*]

Br. Forfeiture de Terre. pl 31. cites S. C. — Br Patents. pl. 32. cites S. C. —

1. **IF the King grants to another** * Bona & Catalla tenentium ſuorum fugitivorum & felonum qualiter cunque damnatorum. **And after a Tenant of the Grantee is** attainted of Treaſon **for killing the Meſſenger of the King, the Grantee ſhall not have his Chattels, becauſe he is attainted of Treaſon.** 22 Aſſ. 49. **Adjudged.**

Bona *Felonum & qualitercunque Damnatorum* does not extend to High-Treaſon, becauſe Felony is named firſt. Hard 442. cites 11 H. 6. 54. b.

* The King granted to the Earl of Arundel and his Heirs, ex gratia ſpeciali, certa Scientia & mero motu *omnia Bona & Catalla felonum, & felon' de ſe, attinct' de proditione, de felonia, Utlagatorum in exigendo poſitorum, Hominum ſuorum, integre tenentium & non integre tenentium, reſidentium de & in omnibus meneriis, & Hæreditamentis dicti Comitis.* The ſaid Earl was *ſeiſed in Fee of the Hundred of Paling* in the County of Suſſex. *B. held a Tenancy in Fee within the ſaid Hundred of the ſaid Earl, as of his Perſon*; B. was attainted of *Treaſon* committed by him in the County of Hereford, and *had a Leaſe for Years and Goods within the ſaid Hundred* of Paling, *and elſewhere, wherè the Earl had not any Hereditament.* Reſolved by all the Judges of England, that the Lord Lumley, who has the Eſtate of the Earl of Arundel, ſhall, by Force of the ſaid Patent, have the ſaid Tenancy, Leaſe, and Goods. The Word (*De*) ſhall be conſtru'd and relate to any Tenure of the Perſon, or of any Manor of the Earl; The Word (*In*) relates to Goods, the Word (*De*) to Tenancies which are held of the Earl, be the Tenants reſident or non-reſident. This is a good Precedent to conſtrue Beneficium principis, quod debet eſſe manſurum. The Words in a Patent Ex certa ſcientia, ſpeciali gratia & mero motu, make the Caſe of the King like the Caſe of the Grant of one Subject to another; if the King be not evidently deceived. Jenk. 255. pl. 45. — cites 30 Eliz. Lord Lumley's Caſe.

Br. Patents. pl. 32. cites S. C. — Br. Forfeiture de Terre. pl. 31. cites S. C.

2. But **upon this Grant he ſhall have the Chattels of his Tenant** who is attainted of Petty Treaſon for killing of his Maſter. 22 Aſſ. 49.

For in Petty Treaſon the King ſhall not have the Eſcheat held of another. Contra, in High Treaſon.

3. The

3. The King by general Words may grant Chattels. 9 H. 6. 28. Fol. 195.

4. If a Man outlaw'd be poſſeſs'd of a Term for Years, or of a Ward, and the King grants to another all the Goods and Chattels of him ſo outlaw'd, the Patentee ſhall have the Term and the Ward. 9 H. 6. 28. Br. Patents. pl. 4. cites S C Per Babington.

5. If the King grants to another, that he and his Men ſhall be diſcharged of Toll, by this he, his Villeins, and alſo Homagers, ſhall be quit of Toll; For in doing of Homage, he ſays, I become your Man. 14 H. 6. 12. See pl. 7. Br. Patents. pl. 27. cites S. C. Per Treſham, who ſays, that if ſuch Grant had been *before Time of Memory*, his Villeins, and *not Homagers*, ſhould go quit of Toll by ſuch general Words. *But*, per Cheiny and June, a Grant by ſuch Words *at this Day* will diſcharge Villeins and Homagers.

In Quo Warranto. The King granted to W. N. *that he and his Men ſhould be quit of Pontage*; This extends only to his *Villeins*, and not to others. Br. Patents. pl. 103. cites It. Nott. tempore. E. 3.

6. If the King grants to another Bona & Catalla felonum & fugitivorum de hominibus ſuis. This extends not to the Goods of Homagers; but only to Villeins, unleſs it had been anciently uſed to extend to Homagers. 40 Aſſ. pl. 21. Adjudged. Br. Patents. pl. 36. cites S. C. —

7. If the King grants Conuſance to another of Actions concerning him & homines ſuos; This ſhall extend to his Villeins, and not to his Homagers. Dub. 12 Aſſ. pl. 35. See pl. 5. Br. Conuſance. pl. 34. cites S. C. — But, per Shard, it extends to thoſe who become their Men in doing Homage; Quære, Of thoſe who do Fealty? But Parning was merely contra; and it was ſaid, that in Protection pro ſe & Hominibus, neither Villeins nor Franktenants ſhall be aided; therefore it ſeems there, that it extends only to his *familiar Servants*. Ibid.

(E. c.) Grant of the King by general Words.

See (I. b) (K. b) (L. b) (Z b) (A. c) (B. c.) (C. c) (D. c)

1. If the King grants certain Liberties to J. S. and inter alia grants to him omnia Bona & Catalla Felonum de ſe within the Vill of S. This ſhall paſs Obligations, Specialties, and Debts due to the Felon; for tho' if the King grant in other Caſes omnia Bona & Catalla ſua, where it is not granted as a Liberty, Specialties and Debts ſhall not paſs without ſpecial Words, being Choſes en Action; yet in caſe of ſuch a Grant of a Liberty, it ſhall paſs ſuch Debts and Specialties; becauſe all Liberties of ſuch Nature have uſed to paſs by ſuch Words in all Ages before; For all ancient Liberties have been granted by ſuch Words, and enjoy'd by Force of them; [and therefore] they ſhall paſs by ſuch Words at this Day, by ſuch Grant of the King. P. 15 Car. upon a Reference out of the Starr-Chamber between the Biſhop of *Winton* the Almoner of the King, and one *Warcupp* the Leſſee of the *City of London*, to whom ſuch Grant was made by E. 6. of Goods and Chattels Felonum de ſe in Southwark, to the Judges of B. R. All the ſaid Judges ſeemed to incline, that it ſhall paſs Specialties and Choſes en Action; but they certified for the Generality of the Caſe, that it was convenient to be tried at the Common Law upon a Suit there. The King by Letters Patents granted to the Mayor &c. of Southampton *omnia Bona & Catalla felonum de ſe*; *J. S.* to whom *Money* was *due on a Bond*, became felo de ſe; In an Action by the Mayor upon the Bond, it was demurr'd, for that a (Debt) would not paſs by a Grant of (omnia Bona & Catalla felonum de ſe) upon which the Plaintiff obtained Leave to diſcontinue. Sid 142. Paſch. 14 Car. 2. Southampton (Mayor) v. Richards — 12 Rep. 1, 2. in caſe of Ford v Sheldon. S. P.

The Lord N. has a grant of *Bona & Catalla felonum et fugitivorum within the Iſle of Ely. J. S. dwelling within the Iſland, was attainted* of Felony. *W. R. was indebted to J. S. by Obligation* condition'd *to pay Money at a Manor of the Lord S. who alſo had Bona Felonum &c. within his Manor.* The Queſtion was, which Lord ſhould have the Money. All the Barons of the Excequer were clear of Opinion, that the Lord S. could not have it; for the *Place of Payment nihil Operatur*, but the Obligation is the Subſtance —

ſtance which came to the Lord N. within the Iſle. But being inſiſted by Popham, the Queen's Attorney, that the Money belong'd to the Queen, and that the Lord N. could not have it; for that by the general Words of Bona & Catalla felonum *Things in Action* do *not paſs, but by expreſs Words* they will paſs; otherwiſe, not; And therefore Day was given to the Lord N. to ſhew his Letters Patents. 2 Le. 56. pl. 81. Trin. 29 Eliz. In the Exchequer. Lord of Northampton v. Lord St. John.—S. C. cited Sid. 142

The Queen granted to one Catalla Utlagatorum & Felonum de ſe, within ſuch a Precinct; a *Debt was due to the Queen by a Felo de ſe* within the Precinct. Reſolved, the Queen ſhall have the Goods to ſatisfy her Debt. 4 Le. 6. 26 Eliz. In Scacc. Anon.

Br. Patents, pl. 4 cites S. C. per Babington.

2. **If the King be** ſeiſed of a Ward, and grants the Land and Body, with all Reverſions and Remainders **to another, and after** other Land deſcends **to the Ward within Age, the Patentee ſhall have this Land alſo.** 9 H. 6. 27. b. **Quære this; For the King continues Guardian, and it is to be intended that he was in Ward for Capite Land.**

Br. Patents, pl. 27. cites S. C.

3. **If the King** releaſes to an Abbot **or Prior** of his Foundation all Services, and that he ſhall be as free in the Church as the King in his Crown; **Tho' this was an ancient Grant, yet the** Corody and Penſion due to the King **are not diſcharged by thoſe General Words.** 14 H. 6. 11. b.

Br. Patents, pl. 27. cites S. C. per Paſton.

4. **If the King grants** Land **to another in Fee, and grants further,** that he ſhall be as free in this Land as the King in his Crown, **yet thoſe general Words do not diſcharge** Fines for Alienation, **which are due by Prerogative, if he aliens without Licence.** 14 H. 6. 12. b.

Br. Garde, pl. 83. cites S. C —Br. Patents, pl. 29. cites S. C—Br. Prerogative, pl. 51. cites S. C.

Nomen worthis the grant.

5. **When** King E. 3. **granted to his Son the** Dutchy of Cornwal, Cum omnibus ad eam ſpectantibus ſimiliter cum Wardis, Maritagiis &c. & ſimiliter alibi extra Comitat. prædictum Non Obſtante Prærogativa Regis, **and after a Man who held of the Duke in Chief by Service of Chivalry is dead, and his Heir is in Ward to the King for cauſe of** Ward for other Land; **The Duke ſhall not have the** Wardſhip **of him by thoſe General Words; For the** King ſhall not paſs ſuch Things as he has in Right of the Crown without expreſs * Mention of his Right. 43 Aſſ. 15. **Adjudged.** D. 9. 10. El. 268. 18.

* Fol. 196.

The King granted to the Dutcheſs of E. *Inſulam de B & Caſtrum cum Pertinentiis* Habendum &c. *ſimul cum omnibus exitibus, finibus, Amerciamentis, profi-cuis omnium Gentium, tenentium, reſidentium, & non reſidentium, Advocationibus, Wardis & Relieviis, Wreckis Maris & aliis de & infra Inſulam prædictam in quibuſcunque Curiis noſtris emergentibus,*

6. Exitus, Fines and Amerciaments of B. vel Coram ipſo Rege in Cancellaria vel coram Theſaurario & Baronibus Scaccarii vel Coram Juſticiar. ad Pacem vel Itinerant. vel ad Gaolam deliberandam vel Juſticiariis Foreſtæ vel Coram Seneſchallo & Mariſchallo Hoſpitii Regis vel Clerici Mercator. **are never allowed to any in the Exchequer upon a Grant of the King without ſpecial Words, or otherwiſe allowed in a Quo Warranto.** D. 10 El. 269. 18.

7. Exitus tenent. vel Fines and Amercements of Conſtables or other Officers of the King **are not allowed in the Exchequer upon a Grant of the King without Words** Licet tenent. Vicecom. Coronator. Ballivi Officiarii ſeu Miniſtri Regis ſunt, **becauſe they are royal.** D. 10 El. 269. 18. 2 H. 7. 7.

and the Sheriff demanded Allowance upon his Account of certain *Iſſues forfeited in Banco at Weſtminſter*, and the beſt Opinion there was, That he ſhall not have Allowance of them, nor the Dutcheſs ſhall not have them; For thoſe Words, *Emergentibus infra Inſulam*, ſhall be intended of ſuch *Fines* &c. which are *forfeited in any Court in the Iſle*, but not of Fines and Amerciaments forfeited at Weſtminſter or elſewhere Extra the Iſle; But the Caſe is not ruled. Br. Patents, pl. 4. cites 9 H. 6. 27.—— S. C. cited Arg. Pl. C. 12. where it is ſaid, That it is held, that the Grant was good.

8. **If the King** has two Titles to a Church, **ſcilicet, the one** as Patron of the Fee, **and the other** by Prerogative by Lapſe the Church being void; **Tho' the King grants the Fee of the Advowſon without expreſs Grant of** this preſent Avoidance **to preſent the Grantee ſhall not have this Preſentment.** D. 18 El. 348. 12. 10 H. 6. 9 E. 2.

9. If

9. If the King is ſeiſed in Fee of an Advowſon, and the Church voids, and afterwards he grants the Advowſon without ſpeaking of the Avoidance, the Grantee ſhall have it. D. 9. 10. El. 269. F. N. 33. n. 18 E. 3. 22. 9 E. 3. 26. 3 H. 7. R. 10. cited in D. 10 El. before. Hobart's Reports 189. Contra D. 13 El. 300. 36. where the Grant is of the Manor with the Advowſon thereto belonging. Jenk. 244. pl. 28. Contra.——Mo. 249. Mich. 29 Eliz. contra, That the Queen ſeiſed of a Manor, to which an Advowſon was appendant, granted the Manor una cum Advocatione, the Church being void, yet the Judgment was, That the Queen ſhould preſent Hac vice. Sir Thomas Gorge's Caſe.—— 3 Le. 196. S. C. by Name of Sir Thomas Gorge v. Dalton.——S. C. cited accordingly. D. 300. pl. 36. in Marg.

10. *B. G. held* a Manor of the King, and *R. W. held another Manor of that Manor, to which laſt there was an Advowſon appendant*; *Both* theſe Men *were attainted* of Treaſon, and the King ſeiſed both their Manors, and afterwards *granted the Manor, which B. G. held of him, una cum Advocationibus eidem pertinentibus*. Adjudged, That the Advowſon did not paſs with that Manor, but was ſtill appendant to the other. Nelſ. Abr. 904. pl. 5. cites Mich. 30 H. 8. Dyer 44. This is not the principal Caſe in Dyer, but is cited there, viz. D. 44. b. pl. 32. That there is a Difference where the *King comes to an Eſcheat as Lord*, and where he comes to it *as King* of England; For where he comes to it as Lord he ſhall not be in other Courſe than as Common Lord, but where as King it is otherwiſe, and then cites the principal Caſe as the Caſe of 6 E. 3. 32. thus, viz. That B. G. *holds a Manor of the King to which a Royal Franchiſe was appendant*, viz. *to have Eſcheats of all Treaſons of ſuch who hold of this Manor*, and that R. W. held another Manor of the ſame Manor to which the Advowſon is appendant, and that R. W. was attainted of Treaſon, by which the *King ſeiſed, and* then *granted the Manor held of him una cum Advocationibus eidem pertin.* And by the Opinion there the Advowſon paſſed not with this Manor, but is appendant as before; But it was held, that the Franchiſe Royal by the Eſcheat was extinct and rejoined to the Crown.

11. If the King grants *Omnia Jura ſua Regalia*, or to be *as free as Tongue can ſpeak or Heart can think*, this ſhall not be taken according to the Words, but *according to the ancient Allowance*, As to *hold Pleas or to have Conuſance* &c. Br Patents, pl. 110. cites 10 H. 7. 13.

12. A Patent in Generalibus *without Reſtriction*, As if the King grants *Omnes Terras ſuas*, or *Maneria ſua*, or *releaſes all Demands*, is a void Patent. Dolus verſatur in Generalibus. Jenk. 304. pl. 77. cites 2 H. 7. 11 H. 7.

13. If the King grants *all his Lands and Tenements in D.* this is a good Grant by thoſe General Words. Br. Patents, pl 95. cites 30 H. 8.

14. King Edw. 6. was *ſeiſed of the Manors of Hackney and Stepney, within which was a great Marſh* called Stepney Marſh, *Parcel of the Manor of Stepney*, which he had *in Exchange* with the Biſhop of London, *and alſo of* 20 *Acres of Land called Stepney-Marſh*, which he had *as Parcel of the Poſſeſſions of the late Priory of Grace*, and *granted* to the Lord Wentworth and his Heirs *the aforeſaid Manors, Nec-non Mariſcos ſuos de Stepney præd. Nec-non omnia Terras & Tenementa & Mariſcos dictis Maneriis aut cæteris Præmiſſis pertinen.* &c. The Queſtion was, If the 20 Acres paſs in the General Words of the firſt Nec-non? Or if the Words in the 2d. Nec-non (dictis Maneriis pertinent.) reſtrains the Generality of the firſt Words? Gawdy, Clench, and Wray conceived, that the 20 Acres did paſs; And Wray ſaid, That againſt expreſs Words no Favour will be given to the King. And it is ſaid, Note, that the Marſhes pertaining to the Manor are in the third Clauſe, Ergo the Marſh in the ſecond Clauſe ſhall be intended a Marſh in Groſs, or otherwiſe it ſhould be idle. And afterwards Judgment was given againſt the Queen. Le. 120. pl. 162. Trin. 3 Eliz. B. R. the Queen v. Lewis and Green.

15. A. being *ſeiſed of the Manor of Q. and alſo of* the Manor of *C.* which was *held of the Manor of Q. was attainted of Felony. Queen* Mary

gave the Manor of Q. to Sir W. M. cum omnibus ſuis Juribus & Parcellis; Adjudged, That the Manor of C. paſſed by this Grant, becauſe it was now Parcel of the Manor of Q. Cited by Periam J. 1 Lev. 26. pl. 33. Paſch. 27 Eliz. C. B. in Caſe of Marſh and Smith, as Sir Walter Mildway's Caſe.

(E. c. 2) Grant. Paſs what. By the Words *Conſtituimus, Conceſſimus &c.*

Br. Grants, pl. 62. cites S. C.

1. IN Aſſiſe, upon a Grant of the *Office of Clerk of the Crown in Chancery*, it need not be ſhewn if there was ſuch Office at the time of the Grant or not: For per Catesby, the King by this Word *Conceſſimus* may grant an Office which had Eſſe before, but by theſe Words *Conſtituimus & Ordinavimus* he may make an Office and Officer which had not Eſſe before, and *the Office of one of the Clerks of the Crown* in Chancery was *granted to two*, where, per Catesby, two cannot have the Office of one Clerk; *Contra* of Grant *of the Office of Clerk of the Crown to two*, and yet non allocatur, but the Grant is good. Br. Patents, pl. 21. cites 9 E. 4. 11.

2 The King having granted to Hugh Moyle *the Office of Broker of London*, by the Word *Conceſſimus to the H. M. Office of Brocar.* &c. And by all the Serjeants the Patent is void, becauſe it wants *Conſtituimus*; becauſe the King *never had granted ſuch Office there before.* And per Brian the Patent is void; For this Office does not belong to the King. By which he granted another Patent, which had *Conſtituimus & Ordinamus* &c. And yet held void, becauſe there was never ſuch an Office &c. But the Mayor admitted him. Br. Patents. pl. 73. cites 21 E. 4. 76.

(E. c. 3) By the Words **Ex Certa Scientia*, †Mero Motu &c.

**Ex certa Scientia imports*, That the King has Knowledge of the Thing which he grants; and therefore ſuch

1. IF the King grants by theſe Words, *ex certa Scientia & mero Motu*, ſuch Patents ſhall be taken more ſtrong againſt the King. By ſome, Br. Patents, pl. 80. cites 9 H. 7. 2.

2. *But* where the King *recites a former Grant, and confirms it ex certa* Scientia & Mero Motu, he ſhall be *Eſtopped to deny the Recital*; per Huſſey; But Brooke ſays Quære. Ibid.

Charter is called Aſſertive and not Suggeſtive, as is ſaid in 2 E. 3. 7. but this is to be intended of Verity, which is the proper Object of Science, and not of Falſity, which is a Non-Ens, and thereof the King cannot have Knowledge; But in ſuch Caſe notwithſtanding thoſe Words the King is utterly deceived in his Grant, and therefore they ſhall not give the Patentee any Advantage. 10 Rep. 112. b. Reſolved Mich. 10. Jac. C. B. Legat's Caſe.——S. P. Arg. 3 Le. 249, in the Caſe of Harris v. Wing——S. P. Pl. C. 502. b. Mich. 18 & 19 Eliz. in the Caſe of Grendon v. the Biſhop of Lincoln.

† *Ex Mero Motu* properly *imports* the Honour and Bounty of the King, who rewards the Patentee for the Merit of his Service of the mere Motion of the King himſelf, without any Suit of the Party; and it was ſaid, That thoſe Words were *added after the Statute of 4 H. 4. cap. 4. by which the King declared, that he would abſtain from granting any Part of his Revenues, Lands or Wardſhips, but to ſuch as deſerve them, and thoſe who ſue for any ſuch Thing ſhall be puniſhed, and ſhall not have the Thing for which the Suit was made*; After which Act, to the End that it ſhould not appear, that any Suit was made, thoſe Words were added, viz. ex Mero Motu. 10 Rep. 112. b. 113. a. in Legat's Caſe.—— S. P. Arg. 3 Le. 249. in the Caſe of Harris v. Wing.

3. If the King has a Mine Royal in the Land of J. S. and he Ex graia ſpeciali, certa Scientia & Mero Motu ſuis, grants to a Stranger all

all Mines, which he has *in the Land of J. S.* by this Grant the Mine Royal ſhall paſs; For otherwiſe the Words ſhall be void; For he cannot have baſe Mines in another's Soil, and therefore when he ſays *Ex certa Scientia*, and recites, That it is in the Soil of another, he cannot be taken Miſconuſant of the Thing, and therefore it ſhall paſs. Per Dyer Ch. J. of C. B. Pl. C. 337. Hill. 9 Eliz. in the Caſe of Mines.

4. The Words *Ad Humilem Petitionem* diminiſh the Force of the Words de Gratia ſpecialia, ac Ex certa Scientia et Mero Motu; For the Charter ſhall not be taken to proceed from the Grace of the King merely, and ſo to be taken more ſtrong againſt the King, and in Favour of the Patentee, unleſs it is merely of the Motion of the King, and without Suit of the Party. Per Catlin Ch. J. Pl. C. 337. in the Caſe of Mines.

5. *Queen* Mary being ſeiſed in Fee, in the Right of her Crown, of a Manor, to which an Advowſon was appendant; and *the Church being then void*, ſhe, in the Time of the Vacancy, ex certa Scientia *granted the Manor & omnes Advocationes eidem* Manerio *pertinent.* ſive incurrent. in tam amplis modo & forma prout &c. *but no Mention* was made *of the preſent Avoidance*, which was at that very Time when the Grant was made; It was adjudged, that the next Preſentation did not paſs by ſuch a Grant. Dyer 300. pl. 36. Paſch. 13. Eliz. The Caſe of the Manor of Bedminſter.

Ibid. Marg. ſays, it ſeems by this Caſe, that the Granteeſhall not have the the preſent Avoidance, contra to F.N. B. 33. &18E. 3. 22. 9 E. 3. 22.

Dier. 269. And this Judgment is good Law, per Cur. Mich. 29 & 30. Eliz. C. B. & Dier. fol. 348 [and where] A had a Manor to which Advowſon is appendant, which is void, he grants the Manor Una cum Advocatione to B. In this Caſe B. ſhall not preſent Hac Vice. Paſch. 28 Eliz. **Sir Tho. Gorge's Caſe**, in a Caſe of the King, And Trin. 15 Jac. **Punchcomb's Caſe** being the Caſe of Common Perſon.

6. Grant *to J. H. Son of T. H.* Ex certa Scientia, et Mero Motu. J. H. *was a Baſtard.* The *Grant ſhall not be* taken in ſuch Plight as the Grant of a Common Perſon, *void for Uncertainty*, becauſe the King takes notice of the Perſon of what Degree he is; And in the King's Caſe where he takes Knowledge by the Words Ex certa Scientia, there all Matter of * *Uncertainty ſhall be avoided*, and made good; *but not Matter which is not true*; And where a Thing may be *taken two Ways*, there without the Words Ex certa Scientia &c. the beſt ſhall be taken for the King, and the ſtrongeſt againſt the Patentee per Manwood; But per Dyer by the Words Ex certa Scientia, the Uncertainty is ſaved, and ſhall be taken ſtrong for the Patentee; And if it can be any ways taken for him, the Patent ſhall not be void; And here the Word (Son) may be taken either for a Baſe, or a True Son. But where the King in his Grant † recites a Thing which is falſe, that ſhall not make the Patent good, altho' the Words be Ex certa Scientia & Mero Motu. 3 Le. 49. pl. 69. Mich. 15 Eliz. in C. B. Anon.

*S. P. Per Manwood Ch. B. As the Uncertainty of the Vill, or when the Patent has different Meanings, and is Executory. Sav. 5. pl. 14 The Words (Ex Mero Motu, et certa Scientia) by which the

King ſays, (I grant it without the Suit of or Information of any Perſon, but of my own Knowledge,) aid all Uncertainties; as if he *grants Lands which belonged to the late Diſſolved Monaſtery of Chriſt-Church* when in Fact there were *ſeverai Monaſteries of Chriſt-Church*, this is help'd; But ſuch Patent ſhall never aid a Falſity; As if the King *grants Lands which came* to him *by the Diſſolution* of a Monaſtery, *when* in Fact *they came* to him *by the Attainder* of Cardinal Wolſey. Per. Cur. Sav. 37, 38. pl. 36. Mich. 24. & 25 Eliz. in Scacc. Attorney-General v. May.

† S. P. per Holt, Ch. J. 2 Salk. 561. Hill. 9 W. 3. in the Caſe of the King v. the Biſhop of Cheſter.

7. By *Attainder of one Diſſeiſed*, a Right to certain Land became forfeited to *the Queen*, who, *after the Death of the Diſſeiſee*, by Letters Patents De Speciali Gratia, Ex certa Scientia, & Mero Motu, *granted all the Lands*, Tenements, Rights, *and Hereditaments*, *which ſhe had by Attainder* of the Diſſeiſee; But it was adjudged, that ſuch a *Naked Right* ſhall not paſs by ſuch general Words of the King; For that (if it can be granted at all) it muſt be with a ſpecial Recital by expreſs and ſpecial Words. 3 Rep. 4. b. cited, and affirmed by the Court to be good Law, by the Name of Cromer's Caſe.

S C. cited Hob. 243. in the Caſe of Lord Stanhope v Biſhop of Lincoln.

9. *Ex*

S. P. Arg. 3. Le. 249. in the Caſe of Harris v. Wing.

9. *Ex Gratia ſua Speciali*, is in reſpect of the Grace and Favour which the King has conceived in reſpect of the Patentee. 10 Rep. 113. a. in Legat's Caſe.

(F. c.) Grants of the King. In what Caſes they ſhall be *void for Uncertainty.*

Cro. J. 421. S. C. by the Name of Lightfoot v. Lenet. Adjudged, That the Grant is uncertain and void; and the averring Payment at Borrow-brigg, without averring Payment at Willow-brigg is therefore ill; And for that Reaſon it was awarded that he ſhould anſwer.

1. **If there are two Brigs in Yorkſhire, ſcilicet, Willowbrig and Borrowbrig, and the King grants to a Man,** That he ſhall take ſo much for every Beaſt which ſhall go over Willowbrig for Toll, as has uſually been taken for every Beaſt which ſhould go there et alibi infra Regnum Angliæ; **Tho' he avers, that ſo much in certain has been paid at Borrowbrig aforeſaid, and ſo much he claims to have, yet this Grant is void for the Uncertainty of the Words** (Et alibi infra Regnum Angliæ) **For this has not any Certainty; For one Place may be** 2 d. **and at another Place more or leſs.** P. 15. Ja. B. R. *Lightfoot* and *Lovett.* **Adjuded.**

2. If the King *grants* to me *that I ſhall not be Sheriff*, this is not good for the Uncertainty, becauſe he *does not ſay of what County*; But contra, if he ſays that I ſhall not be Sheriff *of any County in England.* Note the Diverſity. Br. Patents. pl. 92. cites 2 R. 3. 7. Per Huſſey.

So if the King has 100 *Acres of Land in D.* and he *grants* to J. S. 20 *Acres of the Lands* in D. *without any deſcribing them by the Rent, Occupation or Name &c*

3. The Queen *ſeiſed of a Great Waſte*, called Ruddleſdown, in the Pariſh of Chipnam, *granted a Moiety of a Yard Land in the ſaid Waſte* to the Mayor and Burgeſſes of Chipnam, *without any Certainty, Name, or Deſcription*, and after granted the Waſt to H. Adjudged, That the Grant was void for the Uncertainty of the Thing granted, it being in the Caſe of the King, though otherwiſe it would be in the Caſe of a Common Perſon, where the Grantee might by Election reduce it to a Certainty; And the Court held farther, That the Grant was void, not only againſt the Queen herſelf, but alſo againſt H. her Patentee. Le. 30. pl. 36. Trin. 27 Eliz. B. R. Sir Walter Hungerford's Caſe.

This Grant is void, and the Patentee ſhall not have his Election in the King's Caſe. 12 Rep. 86. in Stockdale's Caſe.

4. If the King grants a Rent or Land *without Limitation of any Eſtate*, the Grant *is merely void* for the Uncertainty, *and the Grantee ſhall not be Tenant at Will* to the King, as it is ruled in **Alton Wood**'s Caſe. And the Reaſon is, Becauſe the Grant of the King ſhall be taken moſt ſtrong for his Benefit and Advantage. Reſolved. Dav. Rep. 45. a. Paſch. 5 Jac. B. R. in Ireland, in the Caſe of the Dean and Chapter of Fernes.

But if the Thing granted be *of ſuch a Nature that diverſe Eſtates may be limited thereof*; As of Land, Seignory, Rent &c. If the King, in his Grant of ſuch a Thing does not limit any certain Eſtate to the Grantee, nothing ſhall paſs by this Grant, but it ſhall be adjudged merely void for the Uncertainty. Reſolved. Dav. Rep. 45. a. in Caſe of the Dean and Chapter of Fernes.

5. If the *Thing granted* be *of ſuch a Nature that diverſe Eſtates may be limited thereof*; As of Land, Seignory, Rent &c. If the King, in his Grant of ſuch a Thing does not limit any certain Eſtate to the Grantee, nothing ſhall paſs by this Grant, but it ſhall be adjudged merely void for the Uncertainty. Reſolved. Dav. Rep. 45. a. in Caſe of the Dean and Chapter of Fernes.

one Eſtate only is incident thereto, which the Law limits without any Limitation made by the Grantor, of ſuch Thing the Grant of the King cannot be doubtful or uncertain, nor can the King be deceived nor can he err; For Error eſt in Bivio, and no Error can be where there is only one Way to be taken. Reſolv'd. Dav. Rep. 45 a. in the Caſe of the Dean and Chapter of Fernes.

6. *Cer-*

6. *Certainty* is requiſite in the Grants of the King. Per Fleming Ch. J. Bulſt. 10 Hill. 7 Jac. in the Caſe of the Earl of Shrewsbury v. Earl of Rutland.

7. King James granted to W. S. *ſo many Debts, Duties,* Arrearages and Sums of Money, *being on Record in any of his Courts from the laſt Year of H.* 8. *to the* 14*th of Queen Eliz. as ſhall amount to* 1000 *l.* It was reſolved, That this Grant was void; for there is no Certainty what Debt ſhould paſs. And that the Word (Arrearages) being coupled with the Words (Debts, Duties, and Sums of Money) ſhould *not paſs Arrearages of Rents, or Things Real,* but muſt be intended of Things Perſonal; but there being a Proviſo that the Grantee ſhould take no Benefit of any Arrearages of Rents, Reliefs, Tenths, or annual Payments whatſoever, till J. S. ſhould be ſatisfied the Sum of 10000 l. this explains what Arrearages were intended, viz. of Rents &c. and ſo one Part of the Patent muſt be conſtrued by the other; but clearly Meſne Rates are not within the ſaid Words; for they are the Profits of Demeſne Lands. 12 Rep. 86. Trin. 9 Jac. in the Court of Wards. Stockdale's Caſe.

8. In Ejectment, the Caſe upon the Evidence in a Trial at Bar was, that *Eleanor Queen Dowager* of H. 3. in the Year 1273. *founded St. Katharine's Hoſpital, reſerving to her ſelf during her Life & Reginis Angliæ nobis ſuccedentibus the Nomination* of the Maſter of the Hoſpital, which was incorporated, and the Grants confirmed by Letters Patents. And the *Queſtion was, Whether* by thoſe Words (Reginis Angliæ) the *Queen Dowager or* Queen *Conſort was intended?* And it was held, that the Queen Dowager had the Right to nominate; for Queen Eleanor, at the Time of Foundation, was only Dowager, and therefore could never be intended to exclude ſuch Queens as ſhould ſucceed her in that Capacity. And the Words will include a Queen Dowager; for ſhe is Queen of England, and as ſuch may ſue in the Exchequer. 1 Vent. 149. Mich. 23 Car. 2. The Caſe of St. Katharine's Hoſpital.

2 Jo. 1-6. S. C. by Name of Leſſee of Lord Brunker v. Sir R. Atkins.—Skin. 2. 14 S. C

(F. c. 2) Grants. *Enure. How.*

1. THE *Aſſiſe had uſually been held in York-Caſtle,* and Queen Eliz. *granted the Cuſtody of the Caſtle* to J. S *with all the Herbage* in the Caſtle. Upon demanding the Opinion of the Maſter of the Rolls, the Ch. J. of B. R. and the Lord Ch. Baron, they held that the Aſſiſes might be held there, whether the Patentee would aſſent to it, or not; for if he might prevent it, ſo might every one, and ſo the Buſineſs for the Publick Good would be unexecuted, which would be very inconvenient, and would be in Effect the barring the Queen herſelf from coming into the Caſtle, it being her Service which is there to be executed, and the Seat of Juſtice her Seat, for which the Common Law with their Commiſſion gives Authority to the Juſtices to appoint the Place of their Seſſions. 1 And. 345. pl. 320.

2. Where the Words *Damus & Concedimus* in the King's Grant cannot enure by Way of *Grant,* but may by Way of *Confirmation,* there they ſhall enure by Way of Confirmation; ſo that a Forfeiture, before Office found of the Forfeiture, is diſcharged by thoſe Words; and tho' they are void as to amounting to any Grant, yet they confirm the Eſtate of the Patentee. Mich. 7 Jac. 8 Rep. 167. in the Earl of Cumberland's Caſe.

Cited per Holt Ch. J. Skin. 661. in Caſe of the King v. Biſhop of Cheſter, (alias Sir W. Theekſton's Caſe.)

3. Holt Ch. J. cites it as ſaid by his Brother Turton, that the *King's Intention* is a qualified Intention, viz. according to the Letters Patents;

but Holt ſaid that a *legal Intention is not neceſſary* in the King, *but only a moral Intent.* Skin. 661. Mich. 8 W. 3. B. R. in Caſe of King v. Biſhop of Cheſter. (Sir William Theekſtone's Caſe.)

See (O. c.)

(G. c.) In what Caſes it ſhall *enure to a double Intent.*

Br. Patents, pl. 9. cites S. C. that he may make ſuch Officers after; and ſo well.——If the King grants *Conuſance of Pleas* to one N. *and does not ſay before whom it ſhall be held*, the Grant is void; for the Grantee cannot make a Judge; *but if he had Court before*, there the Grant is good. Br. Patents, pl. 44. cites 2 H. 7. 13.

1. **If the King grants to another** to hold Pleas before his Bailiffs, Stewards, **or Juſtices, if he** had no ſuch Officers **before the Grant, he cannot make them by it.** 7 H. 4. 5. b.

2. **If the King grants to a Spiritual Corporation** to hold ſuch Church in proper Uſe **for ever, where the** King himſelf is ſeiſed of the Advowſon **of the ſaid Church at the Time; this ſhall not enure firſt to a Grant of the Church, and then to an Appropriation: But the King is deceived, and therefore the Grant void.** 17 E. 3. 39.

Sty. 266. to 273. S. C. and the Judges concurr'd in Opinion that the Copyhold is not deſtroy'd.

3. **If the King be ſeiſed of a Manor, whereof a Copyhold Tenement in Fee is Parcel, and the** King grants the Copyhold Tenement to J. S. for his Life, by his Letters Patents, **tho' this be a good Grant, becauſe the King is not bound to recite ſuch Copyhold Eſtates, they not being of Record, yet after the Death of J. S. the King may grant it by Copy* again; for this doth** not extinguiſh **the Copyhold, becauſe the Grant of the King ſhall not enure to a double Intent, eſpecially to ſuch** collateral Intent; **and it would be of dangerous Conſequence to the Conveyance made by the King to the Subject, if the King once make a Leaſe for Life or Years of a Copyhold, that this ſhould deſtroy the Copyhold for ever.** If a Biſhop Tenant in Tail, for Life or Years, leaſe a Copyhold, **yet this ſhall** not bind the Succeſſor Iſſue in Tail, or him in Reverſion, **to grant it by Copy, nor ſhall bind** an Infant **Lord of a Manor**; and **the Eſtate and Poſſeſſions of the King are in like Manner under the Protection of the Law, in reſpect of the great Affairs of the King; and peradventure it may be a Prejudice to the King to extinguiſh the Copyhold by an Act in Law, by Way of Conſequence, without open Intent of the King; for perhaps a common Appendant or Appurtenant to the Copyhold will be loſt, if the Copyhold be extinguiſhed. P. 1651. between** *Cremer and Burnet* **adjudged upon a Demurrer; per totam Curiam, after diverſe Arguments at Bar. Intrarur. P. 1650. R. 414.**

* Fol. 197. Mar. 206. Paſch. 18 Car. B. R. Fulham v. Fulham, the Ch. J. Bramſtone, and all the Court ſaid, it never was recited in any of the King's Grants what is Copyhold; and they were clear of Opinion that the Grant was not void; but whether it deſtroyed the Copyhold, ſo as the King could not afterwards grant the ſame by Copy again, they agreed might be a Queſtion.——But Jo. 449. Lee v. Boothby, which ſeems to be the S. C. with this of Cremer v. Burnet, reports that it was agreed by Barkley, Crooke and Jones, that this Grant (which was of a Copyhold eſcheated to the King) is an Extinguiſhment of the Copyhold; ſo that it is not again grantable by Copy, either by the King or his Grantee of the Manor after this Eſtate for Life ſhall be determined; and that Bramſtone was of the ſame Opinion.——Roll. Copyhold (B) pl. 1. accordingly. Mich. 15 Car. B. R. Downcliffe v. Minors, reſolved per Cur. upon

4. In the Caſe aforeſaid, **if the King after the Death of the Tenant for Life** grants over the Manor **to J. D.** in Fee, **the** Grantee may grant it by Copy, **as well as the King might, if he had not granted it over; for by the Death of the Tenant for Life, it is reduced to the ſame Condition as it was before the making of the Leaſe for Life. In the ſaid Caſe of** *Cremer and Burnet* **adjudged per totam Curiam; for the Grantee of the Manor doth not communicate of the Prerogative of the King, but has the Manor in the ſame manner as it was in the King at the Time of the Grant made to him.**

upon Evidence at the Bar.——Sid. 17. 35. 81. 137. S.C. by the Name of **Field v. Boothby**; and there it was held by Glyn Ch. J. and Warberton J. againſt Newdigate J. that the Power of granting again by Copy was not deſtroyed.——Keb. 720. Paſch. 16 Car. 2. B. R. **Lee v. Boothby**, ſays that a Grant for Life by the King, is only a Severance of the Copyhold pro tempore.

5. Letters Patents of the King ſhall not enure to two Intents; as where *Land or Office is granted to an Alien born*, this does not make him a Denizen. Br. Patents, pl. 62. cites 7 E. 4. 30. per Cur.

S. C. cited as **Baggot's** Caſe. 3 Le. 243. Mich. 32 Eliz. in Caſe of Harris v. Wing.——S. P. 5 Rep. 56. a. in Knight's Caſe, cites 17 E. 3. 39.——S. C. cited Roll R. 466. Mich. 4 Jac. in Caſe of Colt v. Glover.——S P. By Dyer Pl. C. 501. Mich. 18 & 19 Eliz. in Caſe of Grendon v. the Biſhop of Lincoln, cites 9 E. 4. 6. 11.——*Nor* where the King gives *Land to a Felon*, this ſhall not pardon him of the Felony; for it ought to have ſpecial Words in the one Caſe and the other. Br. Patents, pl. 62. cites 7 E. 4. 30. per Cur.——S. C. cited Roll R. 466. Mich. 14 Jac. in Caſe of Colt v. Glover.——*So* if the King grants Lands *to* J. S. and his Heirs, and in Truth J. S. is *the King's Villein*, this does not infranchiſe the Villein by Implication. 5 Rep. 56. a. Mich. 30 & 31. Eliz C. B. in Knight's Caſe.

6. If the King *grants the Office of Steward* or Conſtable of the Caſtle of D. *where there is no ſuch Office before*, the Grant is void; and therefore the beſt ſhall be taken for the King; and if the King will make ſuch Office, it ought to have this Word *Conſtituimus* &c. Br. Patents, pl. 63. cites 8 E. 4. 6. Per Choke.

7. The *King granted the Office of one of the Chamberlains of the Exchequer to H C. and the Heirs Male of his Body, to be exerciſed by him or his ſufficient Deputy*; and after the *Patentee granted it to J. L. for his Life*; and after the *King confirmed it, and granted* thereby *the ſame Office to J. L. for his Life*; and after *H. C. had Iſſue, and died*; and *the Iſſue died without Iſſue*; and the King granted the Office to another, and J. L. made Debate; and it was held clearly, that of ſuch Offices as are granted by the King to one upon Truſt and Confidence, as an Eſquire for his Body, the Grantee can't make an Aſſignment, if there be no Aſſignment in the Grant, as here, *to him and his Aſſigns*, but of the Office of Parker, he may make an Aſſignment; and if the Patent had not been by him and his Deputy &c. he could not have made a Deputy. And it was mov'd, that tho' the *Grant to J. L.* is *void againſt the Iſſue in Tail, yet 'tis good againſt the King*, by Reaſon of the Confirmation of the King. Contrary per Billing; for by him, if the *King does not recite the firſt Grant*, and grants the Office to J. L. *Habendum after the Death of the firſt Grantee* for Life of the ſecond Grantee, 'tis not good; for the King has not the Office to grant during the Life of the firſt Grantee. Br. Grants, pl. 99. cites 49 H. 6. 14. and 11 E. 4. 1.

Br Office and Officers, pl. 28. cites S. C.

8. The King granted to W. N. by his Letters Patents, *that he may give* 10 *l. Rent to a Chaplain to celebrate Divine Service in B. pro bono Stat. A. & animabus* &c. *juxta Ordinationem ipſius W. N. fiend.* Rede ſaid this is a good Grant, notwithſtanding that the Chaplain be not named, as where the King grants to them of N. ſuch Liberties as thoſe of London have, this is a good Grant. But Fineux and Keeble held the principal Grant void; for Grant of the King cannot enure to *two Intents*; that is to ſay, *to grant Licence, and* to *make a Corporation*. Br. Patents, pl. 44. cites 2 H. 7. 13.

Brooke ſays, *But* ſee that ſeveral ſuch Grants are, that is to ſay, where the King *makes J. N. a Duke, and grants* to him *Land by the ſame Patent, and by the ſame Name.* Ibid.——*So* to *make a Mayor and Commonalty, and to give Land to them by the ſame Patent*, or Licence to purchaſe which is common &c. Ibid.——*But* if the King *grants to J. N. to amortiſe certain Lands*, yet if he gives *Land held of the King in Capite* in Mortmain, the Land ſhall be ſeiſed for Fine for the Alienation, and therefore *it is uſed to put in* ſuch Patents now, *tho' it be held of us in Capite.* Per Keeble. Ibid.

9. It was held by the Juſtices, that if the King *grants Land to a Corporation by another Name* than that by which they were named before, yet *the Land ſhall paſs, and* the Letters Patents *ſhall be* to them *as a new Incorporation* &c. 3 Le. 190. Mich. 26 Eliz. C. B. Dean and Chapter of Chriſt-Church v. Parot.

10. The

S. P. per Dyer and Brown. Ibid. 247. in S. C. who ſaid. That the Rule is true where both Intents enure and work againſt the King. But where one Intent ſerves for, and works for the Benefit of the King it is otherwiſe.

10. The King's Grant cannot enure to two Intents, viz. *to make a Leaſe, and to accept a Surrender*; Per Popham, and many other grave and learned Men upon a Conference. 3 Le. 243. Mich. 32 Eliz. in Caſe of Harris v. Wing.

The King's Grant ſhall not enure (to his ſpecial Prejudice) to two Intents, viz. to a *Demiſe* of the *Land, and* alſo *to a Suſpenſion of his Condition* by which he may defeat the Eſtate for Life, and other Eſtates, as it ſhould be in the Caſe of a common Perſon; or to a Demiſe in reſpect of his preſent Eſtate pur auter Vie, and alſo to a Confirmation of his Condition by which otherwiſe he might defeat all, as it ſhould be alſo in the Caſe of a common Perſon; For the Grant of the King ſhall be taken according to his expreſs Intention comprehended in his Grant, and ſhall not extend to any other Thing by Conſtruction or Implication which does not appear by his Grant, and therefore in ſuch Caſes the King ought to be truly informed, and he ought to make ſpecial and particular Grant, which by expreſs Words may enure to all ſuch ſeveral Intents as are deſired. 7 Rep. 14. a. Mich. 33 & 34 Eliz. in Englefield's Caſe.

S. P. per Ld. Dyer. Pl. C. 502. b. Mich 18 & 19 Eliz. in Caſe of Grendon v. the Biſhop of Lincoln.——S. P. per Williams J. Bulſ. 4. Hill. 7 Jac. in Caſe of the Earl of Shrewsbury v. the Earl of Rutland.

11. If the King's Grant may be taken to a double Intent, it ſhall be adjudged *void for the Doubleneſs* thereof. Reſolv'd. Dav. Rep. 45. a. Paſch. 5 Jac. B. R. in Ireland, in the Dean and Chapter of Ferne's Caſe.

12. When the King *has two Rights* in him, he cannot exclude himſelf of both without ſpecial Words; as Advowſon held of the King is alien'd to an Abbot, now the King has Title to the Advowſon by the Mortmain, and after the King by his Letters Patents grants to the Abbot that he may hold the Advowſon to his own Uſe, yet the King ſhall not loſe Advantage of the Mortmain. 7 Rep. 14. b. Trin. 6 Jac. in Calvin's Caſe.

See (Y. a. 2) pl. 18.

(H. c) *How* it may be *without Grantee.* [Or where it muſt be *by way of Ordinance.*]

If the King grants Land in Fee Farm *Probis Hominibus de Dale*, it was held to be a good Corporation. And ſo where it is given *Burgenſibus, Civibus & Communitati*, and they by ſuch Names of Corporations may have Actions of Things touching their Farm &c. and the Writ ſhall be Ad reſpondend. Hominibus Villæ de Dale, vel Civibus &c. 7 E. 4. 14. a. pl. 7. ——* Orig. is, (Et pur ceo icy eſt bon come la pur Neceſſity.)

1. **The King may** grant generally without Mention of any to whom **he makes Grant, that the Men of ſuch a Vill ſhall be a Corporation, as he may ſay** Conſtituimus the Men of ſuch a Vill to be a Corporation, ſcilicet, Mayor and Comminalty, or ſuch like; **For he cannot grant the Corporation to the Men in their natural Capacity, and they are not a politick Capacity before the Grant, and ſo the Grant to them would be to no Purpoſe, * and therefore it is good here as there for Neceſſity.**

2. **The King may grant to J. S.** that his Tenants ſhall be a Corporation naming the Corporation in certain; **For this is an Erecting of a Corporation as well as in the other Caſe.** 20 E. 3. **Conuſance de Pleas** 46. **Admitted.**

3. **The King by his Letters Patents may ordain,** that from a Vill which is not incorporated ſhall come Burgeſſes to the Parliament to be elected by the Inhabitants of the Vill; **For this is the Caſe of ſeveral Vills and Burrows in England who have Burgeſſes by Preſcription that never were incorporate, and there this Liberty could not** com-

Commence by Grant to any but by way of Ordinance. Hobart's Reports 22. Caſe of Burgeſſes of Parliament.

4. The King may erect a Fair, Market, Warren, Park, Foreſt, Chaſe, Piſcary, or ſuch like, by way of Ordinance, without Grant of it to any. Hobart's Reports, 22.

5. If Letters Patents are made in this Manner, Statuimus, Ordinamus & Declaramus per præſentes, that the Vill of B. ſhall be perpetually a free Borough, and that within the ſaid Borough ſhall be a Body incorporate by the Name of Provoſt, Free Burgeſſes of the Borough, and Commonalty of B. and by this Name may ſue and be ſued, purchaſe, and alien &c. and then follows this Clauſe, Et quod ipſi prætati Præpoſiti & liberi Burgenſes * prædicti & ſucceſſores ſui in perpetuum habeant plenam Poteſtat. & Authoritatem eligendi, mittendi & returnandi duos diſcretos & idoneos viros ad ſerviendum & attendendum in quolibet Parliamento in Regno Hiberniæ in Poſterum tenendo. Tho' this Liberty is not granted to any, yet it is good by way of Ordinance, and this Liberty is good by way of Intereſt in all the Corporation, though the Execution of it be committed to the Provoſt and Burgeſſes only. Hob. R. Caſe of Parliament 22.

S. C. cited Comb. 316. Hill. 6 W. 3. B. R. in Caſe of the King v. Larwood. —— * Fol. 198.

* (7) 6. So the King may grant a Privilege to a Corporation by way of Intereſt, and commit the Execution of it to any Perſons who are not Members of the Corporation. Hobart's Reports, 22.

* This Plea in Roll is marked (7) but it ſhould have been (6)

7. Vaughan held, That the King may *diſpenſe with a Corporation*; and he ſaid, It was very uſual to *Licence them to purchaſe in Mortmain*, to *make Parks*, to convert *Arable into Paſture*, or *Wood into Arable*, to erect a *Fair*, to *appropriate a Rectory* &c. Freem. Rep. 139, Hill. 1673. in Caſe of Thomas v. Sorrel.

(I. c) At what *Time* he may Grant.

1. THAT which is an Inheritance in the King at the time of the Grant, will well paſs by the Grant.

2. As if the King grants to the Tenant, that when he dies his Heir ſhall enter without ſuing of Livery, this is good. 19 H. 6. 62.

3. The King may grant to another all Recognizances which ſhall be made in the Chancery hereafter; Becauſe this is the Profit of the Court. 19 H. 6. 64.

4. The King may grant Wards and Marriages to ſuch a Value which ſhall happen till ſuch a Day, paying &c. 34 E. 1. Rot. Fin. Memb. 15.

5. The King may grant the Ward of &c. quando acciderit. 29 E. 1. Rot. Fin. Memb. 14.

See (I. c. 2) pl. 1.

6. The King may diſcharge ſuch Thing as ſhall be, which is not in him at the Time of the Diſcharge.

S. P. Br. Patents, pl. 53. cites 6 H. 7. 4.

7. As he may grant to a ſpiritual Man, that he ſhall be diſcharged of Tenths when they ſhall be granted by the Clergy. 9 H. 6. 62.

S. P. Br. Patents, pl. 53. cites 6 H. 7.

4. For this ſounds in Covenant, and againſt the King no Writ of Covenant lies; and therefore the Grant is good.

8. * So the King [may] grant to another, that he ſhall not be impeached of a Recognizance, if he enters into it afterwards. 19 H. 6. 64.

*Orig. is (Si)

9. The King by Patent, reciting that H. B. held of him in Chief, granted to T. T. *that if H. died his Heir within Age, that he ſhall have the Ward of his Heir and Heirs* &c. which was argued in the Exchequer Chamber. Choke ſaid the Grant is good; for the King has an Intereſt in

But in Caſe of a common Perſon, it is not a good Grant; for

of this he may have *Writ of Covenant*, and by Conſequence againſt the King, by Way of Anſwer; but Grant of the King, that where A. is indicted of Felony, if

in the Ward, tho' he has not Poſſeſſion. But Halſton ſaid, If the Grant ſhall be good, it ſhall be by Reaſon that the *King has Tenure in him*; but if the King after the Grant grants the Services to a Stranger before the Ward falls, T. ſhall not have the Ward; quære inde; for the Seigniory was charged by the firſt Grant to T. But the Juſtices held the Grant void by the Statute * 18 *H.* 6. that Grants made before the King be-intitled by Office ſhall be void; but this is only of Land, which ſee in the Statute, and *this Grant ſhall enure in Lieu of Covenant.* And there ſome argued that the Statute does not extend to this Caſe; for it was for the King's Advantage; therefore it ſeems that there is no Difference. Br. Patents, pl. 74. cites 30 H. 6. and Fitzh. Grant 91.

he be after outlawed of it, the Grantee ſhall have all the Forfeiture &c. † [is good.] Ibid.——*So* the King may grant the *Temporalties of a Biſhop before they fall*; Per Laicon. But it was ſaid that there is but a little Diverſity between this and the principal Caſe. Ibid.——*So* of *Fines and Amerciaments*, and *Chattels of Felons and Fugitives*, the King is ſeiſed in Law; and therefore his Grant thereof is good; but contra here; Per Vampage. Ibid.——*For* if the King grants *the Eſcheat of his Tenant when it ſhall fall. Or* the *Land which his Villein ſhall purchaſe*; this is not good. Ibid.——† Fitzh. Grant, pl. 91.——* See (H. b)

The King's Grant of the *Temporalties* of a Biſhop *in the Life-time of the Biſhop*, *or* of the *Wardſhip* of an Heir *in the Life-time of his Anceſtor*, who is the King's Tenant, *or of Fifteenths* or Tenths, *before they are given* by Parliament to the King, are good; for the Law underſtands theſe to be *near Poſſibilities.* The Parliament is ſuppoſed to be held every Year, and the King in Parliament generally has Aid of his Subjects; and Statuum eſt omnibus ſemel mori; and therefore the Grant of the Wardſhip, Temporalties and Fifteenths, as aforeſaid, is good: *But* the Grant of an *Eſcheat*, *or* of a *Purchaſe made by Villein*, *or* of the *Forfeiture of the Land of an Offender before his Attainder*, are all void; for they are *remote Poſſibilities*, and out of the Expectation of the Law. Jenk. 210. pl. 44.

10. Note, per Choke and Catesby, Where the King writes to have *B. admitted to a Corody for his Life*, in the Abby of B. who is admitted, the *King cannot write in the Life of B. to have N. admitted to ſuch a Corody in the Life of B. after the Death of B.* For the King has only a Preſentation, and he can't preſent in the Life of B. who is only an Incumbent in Effect in this Caſe. Br. Patents, pl. 30. cites * 39 H. 6. 48.

* Orig. is (36) but miſprinted.

11. Contra per Laicon, That the King may grant Office for Term of Life; and by another Patent he may *recite the firſt Grant*, *and grant it to another after the Death of the firſt*; and well; *but* it ſeems that he *can't* grant it *by Name of a Reverſion*; for there is no Reverſion of an Office; for it is determined after the Death of the Grantee; *but* he may grant it *by Name of Office Habend' after the Death of the firſt Patentee.* Ibid.

And it was held that the Grant is good *before the Act done*, becauſe it is a Thing which *turns in Pœnam Pecuniariam.*

12. In Eſcape out of the Priſon of the Biſhop of S. by Negligence, the Biſhop ſhewed *ancient Grant allowed in Quo Warranto*, where the King had granted to his Predeceſſors *that he ſhould be quit of Eſcapes of Thieves and Felons*, and of Eſcape of Priſoners *out of his Priſon.* And all the Juſtices held it good, becauſe it was allowed in Eyre; for this is *Judgment final* in this Point. Br. Patents, pl. 51. cites 3 H. 7. 15.

Ibid.——*But voluntary Eſcape* cannot be pardoned before the Act done; note the Diverſity. And the Reaſon is, becauſe *negligent Eſcape* is only Money to the King, which he may pardon before the Act done. Ibid.——But ſuch Grant cannot be intended of *Voluntary* Eſcapes. F. N. B. (229) (B.) a. 524. in Notis.

S. C. cited 11 Rep 12. in Caſe of Driddle v. Napper; and ſays that this Queſtion is here well explained and reſolved.

13. Note where the Statute of 31 *H.* 8. *gives to the King the Poſſeſſions of Abbeys, and all Rights, Entries, Actions, Conditions &c. which the Abbots might have had; and that he ſhall be in Poſſeſſion without Office; and that he ſhall be adjudged in actual and real Poſſeſſion of thoſe in ſuch Plight and Sort as they were at the Time of the making of that Statute*, yet if an *Abbot was diſſeiſed of* four Acres of *Land*, the *King cannot grant it over before Entry* made by him into it, becauſe it is a *Choſe in Action Real*, and not like to a Choſe in Action Perſonal, or Mixt, as Debt, Ward &c. by ſome; and by ſome Contra, by Reaſon of thoſe Words, that the King ſhall be in Poſſeſſion; but this ſeems to be that he ſhall be in ſuch Poſſeſſion as the Abbot was, viz. of the Thing whereof the Abbot had Poſſeſſion, the King has by this Actual Poſſeſſion; and of ſuch whereof the

Abbot

Abbot had only Cauſe of Entry, or Right in Action, of thoſe the King ſhall be veſted of a Title of Entry, or Title of Action; but the Thing to which he has ſuch Cauſe of Entry or Action, is not by this in him in Poſſeſſion; and therefore *cannot paſs* from the King *by general Words*. Quære if the King *recites the Diſſeiſin*, and how the Right and Action is * given thereof to him by the Statute, and *grants it ſpecially*, it ſeems that this is good. Br. Choſe in Action, pl. 14. cites 33 H. 8.

14. If a *Man* be accuſed or *indicted of Treaſon* or Felony, his Lands and *Goods cannot be granted* to any, no, not ſo much as by Promiſe, nor any of his Lands or Goods ſeiſed into the King's Hands *before Attainder*; for when a Subject obtains a Promiſe of the Forfeiture, many Times undue Means and more violent Proſecution is uſed, than the quiet and juſt Proceeding of the Law would permit, and the Party ought to live upon his own until Attainder. 2 Inſt. 48.

* Orig. in all the Editions is (bon.) but ſhould be (done.)

15. The King granted the *Office of Searcher* in the Port of P. to J. M. (without granting it to him for Life; ſo that he had only an Eſtate at Will;) and afterwards reciting this Grant, granted to Kemp for his Life the ſame Office, *from and after the Death, Surrender or Forfeiture of* M. This was adjudged a good Grant. 12 Mod. 77. Trin. 7 W. & M. the King v. Kemp.

2 Salk 465. S. C 4 Mod. 276. S. C.— Carth 350. S. C.— Comb. 334. S. C.

(I. c. 2) Grant of the King *in futuro*. Good, and *when* it ſhall *take Effect*.

1. GRANT *of the next Ward* &c. is good; for it ſounds in Covenant &c. Br. Patents, pl. 53. cites 6 H. 7. 4.

2. Grant *of* an *Office*, reciting the firſt Grant, and to *take Effect after the firſt Grant determined*, is a good Grant; for tho' the King has no Reverſion, yet he is ſeiſed of the Office in Law, and Inheritor of this Grant after. Br. Patents, pl. 57. cites 8 H. 7. 12.

3. Queen Elizabeth *granted the Herbage* and Pawnage of Clipſon-Park *to J. S. for Life*; and afterwards *King James* by Letters Patents, *reciting the former Eſtate* for Life, *granted* the Herbage and Pawnage *to the Earl of Rutland for Life*, *not mentioning* in this ſecond Grant, *when the Eſtate* in the Herbage and Pawnage *ſhould begin*, yet the Grant was held good; for the firſt Grant being truly recited in the laſt, the King could not be miſtaken, or intend to paſs a greater Eſtate than he had to grant; and therefore the Eſtate in the Herbage and Pawnage *ſhall commence* to the Earl, *as by Law it may*, viz. after the Death &c. of the firſt Tenant for Life; nor was there any Uncertainty when it ſhould commence; for tho' the Grant to J. S. might be determined ſeveral Ways, either by his Death, Forfeiture or Surrender, yet it can determine but once, and which ever firſt happens, the other Grant ſhall then commence. 8 Rep. 55. Mich. 6 Jac. C. B. Earl of Rutland's Caſe.

1 Bulſt. 4. Earl of Shrewsbury v. Earl of Rutland. S. C.— 2 Brownl. 299. S. C.— Jenk. 283 S. C.

4. Queen Mary granted Eſtwood-Park *to the Lord Stafford and his Wife*, *and* to *the Heirs of the Body of the ſaid Lord*; afterwards Queen Elizabeth, Anno 7. of her Reign, *reciting the former Eſtate*, *and that ſhe had the Reverſion Expectant*, ſhe for the Sum of 53 l. 18 s. *granted the Reverſion to J. S. and to the Heirs of his Body*; *and* ſhe did further *will and declare*, that *if the ſaid J. S. did pay the further Sum of* 20 *s. &c. then he ſhould have Prædictam Reverſionem to him and his Heirs* for ever. And it was adjudged that the Words (Will and Declare) are ſufficient to amount to a Grant; and ſuch Words are always uſed in Patents of Liberties and Franchiſes, being Things contingent, and De futuro; and that ſuch Grant, with a Condition Precedent, might be annexed to Things lying in Grant, as a Reverſion, as well as to Things lying in Livery; or to an Eſtate Tail, as well as an Eſtate for Life, or Years. And laſtly,

2 Brownl. 248. Malin v. Tully. S. C.

ly, that the Words (*Reverſionem prædict.*) muſt be intended of ſuch a Reverſion as the Queen had, and could grant, viz. the Reverſion of the Fee, and do not mean the Reverſion in Tail which ſhe had before granted to him, and therefore could not grant to him again. And that ſuch Words, in the King's Grant, ought not to receive too nice a Conſtruction. 8 Rep. 73. b. Trin. 7 Jac. Lord Stafford's Caſe.

And Holt Ch. J. held, that if the King grant an *Office to commence* in futuro, when there is *no other Eſtate in Being, to continue till the Office ſhall take Effect*, that it is good; ſo if he grant an Office to commence *on a Contingency a Year hence*, or the like; for tho' a Freehold cannot commence in Futuro, that is to be *underſtood* where it is *derived out of an Inheritance*. If there be an *Office in Fee*, and the King has the Inheritance, there a Freehold can no more commence in Futuro by Letters Patents than by Livery of Seiſin; ſo is 5 Co. Berwick's Caſe. 12 Mod. 80. King v. Kemp.——*But* if it be a *New Thing* created by the King, he may conſtitute it in what Manner he pleaſes; as a *Rent de novo*, may be granted or created to commence in Futuro, or on a Contingency, as in the Caſe of Ed. 2. quoted in Corbet's Caſe, in 1 Co. 87. For it is a Creature of his own, and he may diſpoſe of it as he pleaſes. 12 Mod. 80. King v. Kemp.—— And *to riſe and fall*, and to be *in Eſſe, and not in Eſſe*, as well as a Rent. Per Holt Ch. J. Skin. 581. S. C.

5. Grant of an Office of Searcher &c. *for Life, after the Death, Surrender or Forfeiture of the former Grant* of the ſame Office, which was granted *at Will*, is good. And if the King ſhould *determine his Will in the Life of Grantee at Will, without any Surrender or Forfeiture*, in ſuch Caſe the ſecond Grant ſhall not commence during the Life of Grantee at Will; but in the mean Time the King may grant it to whom he pleaſes. Per Holt Ch. J. 12 Mod. 80. Trin. 7 W. & M. The King v. Kemp.

(I. c. 3) Grant *determined by Death* of the King, or Patentee.

1. WHERE the King *grants to his Tenant, that his Heir after his Death ſhall not be in Ward*, or grants *to an Abbot that the Covent ſhall make an Abbot without Licence of Election*, if the Tenant dies his Heir ſhall be in Ward, or if the Abbot dies, the Covent ſhall not make an Abbot without Licence; For in the one Caſe the *Grant expired by the Death* of the Tenant, *becauſe* it was *not granted to him and his Heirs*; and in the other Caſe, becauſe it was not granted to the Abbot and his *Succeſſors*; For when the Grantee is dead, none is alive who can enjoy or plead the Grant; But where it is granted to the Tenant and his Heirs &c. the Heir ſhall not be in Ward; nor where ſuch Grant as above is granted to the Abbot and his Succeſſors; [And there] the Grant is good clearly; Per Laicon; & nemo contradixit. Br. Patents, pl 30. cites * 36 H. 6. 48.

* It ſeems that it ſhould be (39) H. 6. 48.

2. If a *King grants Conuſance of Pleas to J. N. and dies*, the Grant is not good againſt the other King, in as much as it was not granted for the King and his Heirs; For it is de Jure Corone, and yet Confirmation of the new King ſhall make it good. Brooke ſays, it ſeems, That the firſt Caſe is not Law. Br. Confirmation, pl. 28. cites 2 H. 7. 10.

3. *Contra of Annuity which charges the Perſon.* Ibid. cites S. C. and ſays, ſee M. 2 E. 4. 23, 24.

Where the King *grants Office or Annuity for Life* &c. which *is not a Judicial Office* and dies, there *needs no Confirmation of the new King*; By all the Juſtices. Br. Patents, pl. 89. cites 1 R. 3, 4.——*So of Franchiſe, contra of Judicial Offices.* Ibid.

4. If the *King for him and his Heirs grants Catalla Felonum & Fugitivorum* &c. which lie in Grant, *and he dies*, the *Grantee needs no Confirmation of the new King*; but if the *Thing be abuſed or miſuſed*, as Fair, Market or ſuch like may be, or if it be a *Thing Judicial*, or *Power granted, As to be Juſtice of Peace, Eſcheator*, or ſuch like, there he ought to have

Br. Confirmation, pl. 29. cites S. C.

have Confirmation of the new King. *But* it ſeems, that *the Grant of a Thing which lies in Grant is good* clearly *without thoſe Words (for him and his Heirs,) but of Warranty, Covenant, Annuity*, or ſuch like, there *he ought to make it for him and his Heirs.* Br. Confirmation, pl. 19. cites 33 H. 8.

5. A *Licence* granted by the King *to alien in Mortmain* ſhall ſerve againſt the next King, if the Grantor dies. Br. Prerogative, pl. 106. cites F. N. B. 223. S. C. cited Pl. C. 457. b. Trin. 15 Eliz in Sir Thomas Wroth's Caſe, where it is ſaid, That it ſeems to be good Reaſon, tho' the Grant was not made for the King and his Heirs, in as much as it was granted in the Body Politick of the King. —— Br. Prerogative, pl. 106. adds, that *Contra* it is ſaid elſewhere of Grant made *to the Tenant to alien*, this ſhall not ſerve againſt the next King. —— Co. Litt. 52. b. ſays, That it was reſolved, Mich. 3 Jac. in C. B. that the Licence may be executed after.

6. King Edw. 6. *granted to foreign Merchants to export Merchandizes, paying the like Cuſtoms as any Engliſh Merchants* paid; now though the Grant did *not expreſs Pro ſe & Hæredibus*, yet becauſe the King had an Inheritance in the Cuſtoms as a Prerogative annexed to the Crown, it ſeemed to all, that the Grant was good for the Cuſtom. D. 92. a. pl. 17. Mich. 1 Mar. Anon.

7. If the King grants to a Man *to export* 1000 *Tun of Beer*, aliquo Statuto non Obſtante, and *ſays not, for himſelf, his Heirs, and Succeſſors*, the Queſtion is, If in ſuch Caſe the Grant determines not by his Death, it being only a Licence Diſpenſative and revocable before Execution of it? D. 92. a. pl. 17. in an Anonimous Caſe there, but no Opinion given.

8. The King grants *Annuity for Term of Life Percipiendo ad Receptum Scaccarii noſtri*, and does *not ſay* in his Grant, *Proſe & Hæredibus & Succeſſoribus ſuis*; whether the Heir or Succeſſor ſhall be charged with this? and the Habendum was, Percipiendum ad Receptum Scaccarii noſtri *per Manus Theſaurarii Camerariorum noſtrorum ibidem pro Tempore exiſtent.* And this Grant was pro Servitio tam Regi H. 8 quam dicto Regi E. 6. impenſ. It was debated in Serjeant's Inn; And by the Opinion of Cordel Solicitor, Griffith Attorney, Dyer one of the Queen's Serjeants, Whiddon, Brooke Ch. Baron, Morgan and Bromley Ch. J. the Annuity is determined by Death of the King; But Stamford, Saunders, Brown, and Portman held the contrary. Ideo Quære. And it was ſtrongly held, that the Grant is void to charge the Perſon of the King, and without ſhewing certainly by whoſe Hand it ſhall be rendered, the Grant is void; And this by the Opinion of Fitzh. in N. B. laſt Caſe in Writ of Annuity; And then for this Reaſon there is no need of ſaying Pro Hæredibus & Succeſſoribus Regis; but by reaſon of the laſt Words, viz. *Scaccarii noſtri per Manus Theſaur. & noſtrorum*, this *refers only to King E.* 6. and therefore the Eſtate in the Annuity was limited, and by the King's Death determined. D. 92. a. b. pl. 19. Ibid. 92. b pl. 20. cites Pl. C. 449. at the End of Wroth's Caſe, that by Saunders Ch. Baron, the Reſolution of the Juſtices above was, That if the Annuity was granted *Pro Executione alicujus Officii vel Servitii*, the Patents ſtand not in need of the Word Hæredibus.

9. Queen Mary, Ex ſpecialia gratia &c. made a Grant to A. B. *to keep a Tavern and ſell Wines by Retail Non Obſtante the Statute 7 Ed.* 6. in which ſhe *commanded her Officers to permit the Patentee to keep a Tavern and ſell* &c. for Life; Catlin held the Diſpenſation perpetual during the Life of A. B. and that he is, as it were, exempted out of the Statute utterly, or otherwiſe the Licence being once put in Ure is immediately determined &c. But Dyer and Saunders contra, and that there *ought to be a certain Time and Limitation of the Prince's Pleaſure*, How long the Diſpenſation and Licence ſhould continue, and that by the Death of the Prince this Commandment ſhall utterly ceaſe. Ideo Quære Legem. D. 270. pl. 22. Hill. 10 Eliz. Anon. Ibid. Marg. cites 17 E. 1. Adjudged, That if the King *grants Land* to one by Letters Patents, *and ſays not for how long*, he ſhall be Leſſee at Will, and not for Term of Life, which Caſe Coke affirmed in C. B Paſch. 8 July, and that he denied the Opinion of Choke 5 E. 4. 8. 21 E. 4. 46.

S. C. cited Lev. 220. Trin 19 Car. 2 B. R in Caſe of Thomas v. Sorrel ſays, That an Intereſt paſſed *by way of Reſtitution to what was their Right before the Statute was made.*

10. *Wine Licence* was granted by the King Pro ſe & Hæredibus to A. and B. and their Aſſigns, to ſell Wine in ſuch a Vill. Adjudged, That this continues notwithſtanding the Demiſe of the King. Sid. 67. Mich. 12 Car. 2. C. B. Young v. Wright.

11. *And* per Bridgman Ch. J. This Caſe *differs* from Caſes of a *naked Authority*, in as much as the King who makes the Grant has an Intereſt of *Inheritance in the Thing* which he grants; And he likened it to the Caſe where the King granted 10 *l. out of Tonnage and Poundage*; This is good, tho' Tonnage &c. then ceaſed by the Parliament's not granting it. Sid. 7. in Caſe of Young v. Wright.

12. *So* if the King grant the *Tenths* or Fifteenths of D. to J. S. *tho' the Clergy at the time have not granted it to the King*, yet the Grant is good; Becauſe the Inheritance is in the King, tho' *not then in Prender*, and ſo a fortiori the Grant ſhall be good in the principal Caſe of the Wine Licence. Sid. 7. in Caſe of Young v. Wright.

13. Scire facias to repeal a Patent; The Caſe was, That *King Ch.* I. *granted to one P.* the *Office* of Under-ſearcher &c. *durante beneplacito noſtro*, and after *King Ch. II.* was reſtored, he *ſent his Privy Signet* to the Lord Treaſurer *to confirm P. in his Place.* F. obtained a Patent from King Ch. II. of this Place without taking Notice of ths former Patent to P. And the Queſtion was, Whether this ſecond Patent was void by the Stat. 6 H. 8. cap. 15. It was agreed on all Hands, that the King's Privy Signet did but intimate the King's Mind, but could transfer no Intereſt. But the Lord Chancellor, Windham, and Rainsford inclined, That the Patent was void, and the Scire facias to be quaſhed without better Cauſe ſhewn. Freem. Rep. 71. Hill. 1672. the King v. Foſter.

See (R) &c. —(Y. b) — (A. c) pl. 1. Ancient Demeſne (B) and other proper Titles.

(K. c) Grant of the King. Prerogative. What *Immunities* the King may grant.

1. THE King may grant, that the Citizens of a Vill ſhall be quit of Toll in every City and Vill in England of all their Merchandizes. 49 E. 3. 6.

2. 3 E. 1. Rot. Clauſo Memb. 8 H. 3. Grant that for ſuch time J. S. ſhall be free De Summonitionibus coram Juſticiariis Itinerantibus. 8 E. 1. Rot. Pat. Memb. 4. Hac Vice de omnibus Summonitionibus [coram] Juſtic. Itinerant. tam ad Communia Placita quam ad Placita de Foreſta.

So a Grant of Diſcharge from Payment of *Priſage*, which is *made Civibus de London.* Supra.

3. 2 & 3 E. 1. Charter-Rolls. Memb. 3. Quietation from Toll per totum Regnum, Pro Civibus et Hominibus Bathonum et Epiſcopi. Per E. 1. See the Caſe of Waller v. Hanger. 3 Bulſt. 1 &c And ſee S. C. (R. 2)

4. H. 6. by his Letters Patents, 20 H. 6. granted to Corpus Chriſti College in Oxford, that they and their Succeſſors and their Tenants ſhould be diſcharged of Payment of Toll for Pontage and Paſſage in every Place in England; which is admitted good. Tr. 43 El. B. R. between *Wood* and *Hawkſwell.*

* Fol. 199.

5. 18 E. 1. lib. Parl. 1 R. 1. Grant to the Biſhop of Coventry and Litchfield, That all his Lands and Men liberi ſint & quieti de Murdro & Latrocinio & Shire & Hundred, & de Sectis Shire & Hundred, & * Auxiliis Vicecom. de Foreſta & Placitis Foreſtæ, & de Vaſtis & Aſſartis

Aſſartis Regardis Foreſtæ, & omnibus aliis Operibus tam Caſtellor. quam Vivar. & Stagnor. &c.

6. 23 E. 1. **Rot. Pat. M. 9. The King ad Petitionem &c. and by the Aſſent of the City of London, granted, That J. Citizen of London, ſhould for his Life be free in the City,** de omnibus Tallagiis, Auxiliis, Vigiliis & Contributionibus, ratione Terræ & Merchandiſarum ſuarum. **Item,** quod non ponatur in Aſſiſis ibidem nec fiat Major, Vicecomes, Eſcheator, Coronator, Præpoſitus, Aldermannus &c. 1 E. 2. Part 1. M. 15.

7. Glanvil, of Lincoln's-Inn, in his Reading in Lent 1629, ſaid, That he had ſeen a Patent granted to One, that he ſhould not be compell'd to be *Serjeant*, or *Judge*, or *Knight*. D. 52. a. Marg. pl. 1.

(L. c) Prerogative. Immunities.

1. 18. E. 1. **Rot. Chartar. Memb. 20. in Dorſo. R. 1. granted great Privileges** to Hoſpitallers **&c. where are ſuch Words, ſcilicet,** Omnem Poteſtatem, omnes Libertates & liberas Conſuetudines, quas Regia Poteſtas conferre poteſt &c. **Conceſſit** omne Jus, omne Dominium, quod ad nos pertinet &c.

2. 24 E. 1. **Rot. Chartar. Memb. 1. Diſcharge of** Cuſtoms and Tallages **Pro Priore & Fratribus de Whittenham, Ordinis Carthuſienſis.**

3. H. 7. granted *to the Corporation* of Waterford, *Quod omnes et ſinguli Cives et Inhabitantes* dictæ Civitatis *et omnes et ſinguli Mercatores, tam indigenæ quam alienigenæ de nova Cuſtuma vocat. le Pondage* viz. *De præſtatione* 12 Denariorum de Libra, *imperpetuum ſint quieti et exonerati &c.* Dav. Rep. 14. a. Mich. 5 Jac. B. R. in Ireland, in the Caſe of Cuſtoms.

(M. c) Patents. *Conſideration.*

See (Q. b)

1. **IF the King be** deceived in the Conſideration **which he intended to have, the Grant is void; otherwiſe, if not, (Co. 10. 67.) admitted. M. 5 Ja. Scacc. 6 Ja. Sir *Robert Johnſon*'s Caſe.** *False Conſideration* in Letters Patents does not avoid them;

As where the King, for 10 l. to him paid, gives ſuch Land, and the 10 l. is not paid, the Patent is not void. *Contra*, Of Patent granted *upon falſe Surmiſe, as that the Land came to the King by Attainder of J. S.* which is not true, or the like; Quære Diverſitatem. Br. Patents. pl. 100. cites 37 H. 8. — Br. N. C. 37 H. 8. pl. 310

In all Caſes where the Conſiderations are real, and ſavour of the Land, or *extend* to ſuch a *Real Thing*, if it be *falſe* it deſtroys the Patent. *But* where the Conſideration is *Perſonal*; as in Conſideration of * Money paid, or for Service done; altho' it be falſe, yet the Patent may be good. Per Popham, Attorney-General, Arg. 3 Le. 248. Mich. 32 Eliz. B. R. in Caſe of Harris v. Wing.

* S P. Hob. 222. in Caſe of Needler v. the Biſhop of Winchester.

2. Surrender of Letters Patents in Chancery to be cancell'd **being the Conſideration is good; for the Lord Chancellor or his Officers ought to cancel [them]. Co. 10. 67. b. Contra, P. 11. Ja. Scacc. St. *Saviour*'s Caſe. M. 5 Ja. Scacc. M. 6 Ja. Sir *Robert Johnſon*'s Caſe.**

3. **If A. ſeiſed of Land for Life, takes** New Eſtate **of the King, by Letters Patents, in which the ſaid Eſtate is** recited, **and in Conſideration of this Eſtate, the King grants it to A. for a certain Eſtate, This is a good Grant, tho there was** not any actual Surrender, Hob. 203. Trin. 14 Jac. Swain v. Holman.--Hutt 7. S.C.

render, but only a Surrender in Law by the Acceptance of this new Patent. Hob. R. 275.

Hob. 203. S. C —— S. C. cited Hob. 226. Trin. 16 Jac. in Case of Needler v. the Bishop of Winchester. —— Hut. 7. S. C.

4. But if Baron and Feme are seised in Right of the Feme for Life of the Feme, and the King grants it to the Feme for Life of the Feme, with Remainders over, **by new Letters Patents, in Consideration of the** Surrender of the first Estate. **This is a void Grant, because this Surrender** is not absolute, **inasmuch as the Feme after the Death of the Baron, may claim her ancient Estate. Hob. R. 275. between** *Swain* **and** *Holman.*

So a Patent upon a Consideration *executory*, and *not perform'd*, is void.

5. **If the King makes a Lease** for divers Considerations executed **and it appears to the Court, that** some of them are not performed in truth, **the Lease shall be adjudged void. M. 11. Ja. Scacc. St.** *Saviour's* **Case. Resolved.**

Jenk. 304. pl. 77. cites 5 Rep. 93. b. Berwick's Case.

6. **If the King** recites, that where B. had surrendered **to him an Estate for Life, he, in Consideration of this Surrender, grants it by Letters Patents to B. &c. If this** Surrender **was not absolute, but** upon * Condition revocable, **this is a void Grant, because the King is deceived. Hob. R. 276.**

* Fol. 200.

Lane. 108. S. C.

7. **If the King lease Land to B. in Consideration** tam de 20 l. paid, quam pro eo quod the said B. super se assumpsit to repair **the Thing leased at his own Costs, (being then greatly in Decay) and to maintain and leave it well repaired; and after the** Lessee doth not repair **it; yet this shall not avoid the Lease; because the King may have Action of** Covenant **upon the Patent against the Lessee upon the said Promise. M. 8. Ja. Scacc. between** *Sawyer* **and** *East. Dub.*

It is a Maxim That if the Consideration, which is for the Benefit of the King, be executed or executory, or be it of Record, or not of Record, be *not true, or not duly performed, or if Prejudice may arise* to the King *by reason of the Non-performance* thereof, the Letters Patents are void. 5 Rep. 94. a. Trin. 39 Eliz. in the Exchequer. Barwick's Case.

8. **Considerations** past, **and** affirmed to be so in the Patent, need not be found, or averred to be true. **Co. 10. 67. b.**

9. **But** otherwise **it is the Consideration be** future.

5 Rep. 93. Trin. 39 Eliz. Barwick's Case.

10. The Queen *granted a Manor for 21 Years.* The *Grantee granted a Cotage Parcel* of the said Manor, and afterwards surrendered the Manor to the *Queen*, who, *in Consideration of the Surrender, granted him a New Lease* of the said Manor. The Barons, viz. Periam, Clarke and Evans, agreed, That the second Lease made in Consideration of the Surrender, whereas all the first Lease was not surrendered, was void; Because the Queen was deceived in the Consideration. Mo. 393. pl. 509. Hill. 37 Eliz. Berwick's Case.

11. The Lord Chancellor said, That the *Service done to the Realm* was as valuable as if 500 l. had been given for the Land. Cary's Rep. 45. cites 23 Jan. 1 Jac.

12. If the King, in Consideration of *Land conveyed* by J. S. to the Lord Treasurer for the King's Use, grants to J. S. and the Land conveyed by J. S. *is gotten by Disseisin*, and the *Disseisee enters* upon the Lord Treasurer, yet the King's Grant shall stand good; for the Consideration was true, and you must not strain it beyond the Words by any Imaginary Intent. Per Hobart Ch. J. Hob. 221. Hill. 12 Jac. in the Case of Needler v. the Bishop of Winchester.

13. When the King makes a Grant by the Words *Ex mero Motu*, and *yet expresses a real Consideration* moving his Grant *which is false*; Now (since these are Contrarieties, and cannot stand together) *the Law shall judge*

judge upon the Conſideration, and ſhall not regard the Clauſe of the Form *Ex mero Motu*, which is *Clauſula Clericorum*, but ſhall reject that as the Court does the Opinion of the Jury when they find the Fact, and conclude upon it contrary to Law. Per Hobart Ch. J. Hob. 222. Hill. 12 Jac. in the Caſe of Needler v. the Biſhop of Wincheſter.

14. *Void Letters Patents ſurrendered* are yet a good Conſideration, becauſe of the Intention; ſo that *every Deceit*, or Miſtake in Patents, *do not vitiate* them. Per Holt Ch. J. Skin. 663. Mich. 8. W. 3. B. R. the King v. Biſhop of Cheſter. —cites 1 Rep. Alton Wood's Caſe — 6 Rep. 55.— 1 Roll's 32.—2 Roll's 60. [118] Dickſon's Caſe.

(N. c.) Patents of the King; how they ſhall enure. *To how many Intents.*

See (G. c.)

1. **The Patent of the King may enure** to three Intents expreſſed in the Patent. **Co. 10. 28.** As to make an Incorporation, to make Succeſſion, and to grant a Rent. 10 Rep. 28. a. Mich. 10 Jac. B. R. in Sutton Hoſpital's Caſe.

(O. c.) How they ſhall be *Expounded.*

1. IF two Conſtructions may be made **of the Grant of the King**, and by one the Grant ſhall be void, and by the other good; **then for the Honour of the King and the Benefit of the Subject ſuch Conſtruction ſhall be made that the Grant ſhall be good. Co. 6. *Molin.* 6. Co. 10. 67.** The King's Grants ſhall be taken *beneficially for the Honour of the King*, and for the *Relief of the Subject* and not to make any ſtrict or literal Conſtruction in Subverſion thereof. 6 Rep. 6. a Hill. 9 Eliz. in Scacc in Sir John Molyn's Caſe.

When a Charter of the King may be taken *to two Intents*, and both Intents are *of Effect and good*, in many Caſes it *ſhall be taken to ſuch* Intent, *as is moſt beneficial for the King*; *but if* it may be taken *to one* Intent of Effect, and *good*, *and to another* Intent *void*, and of no Effect, *it ſhall be taken* and *conſtrued* according *to ſuch* Intent; *that the Grant ſhall take Effect*, and this in Judgment of the Law ſtands with the Intent of the King; For it was not the Intent of the King to make a void Grant. 8 Rep. 167. a. Mich. 7 Jac. The Earl of Cumberland's Caſe. --5 Mod. 301 Mich. 8 W. 3. S. C. cited Arg. and ſays, That it is a good Rule.— S. P. 8 Rep. 56. Mich. 6 Jac. in the Earl of Rutland's Caſe—S. P. 10 Rep. 67. b Trin. 11. Jac. in the Church-wardens of St. Saviour's Caſe. ——— S. P. 11 Rep. 11. b. Mich. 10 Jac. in the Caſe of Priddle v. Napper.

2. Patent *ex mero Motu* ſhall be taken ſtrongeſt for the Party, and againſt the King; contra of Patent granted upon *Surmiſe*, or at the Suit of the Party. Br. Patents pl. 24. cites 37. H. 6. 21. Br. Charters de Pardon pl 24. cites S. C.

3. *Antient Charters*, whether they were before Time of Memory or after, ought to be conſtrued as the Law was taken when the Charter was made, and according to antient Allowance; And when any claimed before the Juſtices in Eyre any Franchiſes by an antient Charter, tho' it had expreſs Words for the Franchiſes claimed; Or if the Words were general, and a continual Poſſeſſion pleaded of the Franchiſes claimed; Or if the Claim was by *old and obſcure Words*, and the Party in pleading expounding them to the Court, and *averring Continual Poſſeſſion* according to that Expoſition, the Entry always was *Inquiratur ſuper Poſſeſſionem & Uſum.* 2 Inſt. 282.

4. 2 Inſt. 496, 497. Upon the Statute of Quo Warranto 18 *E.* 1. ſays, The Rule laid down is an excellent one *for Conſtruction of the King's*

Letters Patents, not only of Liberties, but of Lands, Tenements, and other Things which he may lawfully grant, that they have no ſtrict or narrow Interpretation for the overthrowing them, but *ſecundum earundem Plenitudinem judicentur*, viz. to have a liberal and favourable Conſtruction for the making them available in Law uſque ad Plenitudinem, for the Honour of the King; And that it is alſo hereby implied, that they are to be couſtrued Secundum earum Plenitudinem, viz. *as fully and beneficially as the Law was taken at that Time when they were made*; And Lord Coke adds, That certainly theſe antient Laws were Directions to the Sages of the Law for the Conſtruction of the King's Charters and Letters Patents, as appears in our Books.

5. 43 *Eliz.* 1. Enacts, That *the Letters Patents of all Grants made by the Queen ſhall be expounded moſt beneficially to the Patentees, any Miſnaming, Miſ-recital, Non-recital &c. notwithſtanding.*

6. Every Gift or Grant of the King *has* this *Condition either expreſſed, or implied annexed* to it; ſc. *Ita quod Patria per Donationem illam magis ſolito non oneretur ſeu gravetur* 11 Rep. 86. b. Trin. 44 Eliz. in the Caſe of Monopolies.

7. King James, Ex certa Scientia &c. granted to Jehu Webb, the *Office of the Maſter of Tennis-Play, as well within the Palace of Weſtminſter, as of the ſaid King elſewhere*, during his Life; It was adjudged, That this Grant ſhould have a reaſonable Conſtruction, and *extend* not only to when the King himſelf plays in Perſon, but likewiſe *to Tennis Plays of the King's Houſhold.* 8 Rep. 45. Mich. 6 Jac. C. B. Jehu Webb's Caſe.

8. When the King's Grant cannot be conſtru'd to a double Intent, the ſame is then to be conſtru'd *according to the Intent and Meaning of the King.* Per Williams, J. Bulſt. 6. Hill. 7 Jac. in Caſe of the Earl of Shrewsbury v. the Earl of Rutland.

Cro. J. 521. pl. 7. Hill. 16 Jac. B. R. Sir John Brett v. Cumberland.

9. The *King leaſed* for 21 Years, and the *Leſſee*, his Executors and Aſſigns, were *thereby tied to repair.* And it was moved, that this being the King's Patent, wherein the Leſſee takes only, and not made by him, whether that Clauſe for the Repairing ſhould be taken and *interpreted as a Covenant on the Leſſees Part*, to bind him and his Aſſigns. And reſolv'd, that it ſhould. Cro. J. 240. Paſch. 8 Jac. B. R. Lord Ewre v. Strickland.

As if the King grants to me *Liberties in all my Lands*, I ſhall have the Liberties in the Lands which I had at the Time of the Grant, and *not in the Land which I purchaſe after.* Dav. Rep. 15. a. in the Caſe of Cuſtoms, cites 38 H. 6. 10. a. — *So* if the King grants Liberties *in all my Demeſnes*, and after a Tenancy eſcheats I ſhall *not* have the Liberties *in the Lands newly eſcheated.* Dav. Rep. 15 a. in the Caſe of Cuſtoms. — *So* if the King grants *Catalla felonum quorumcunque*, and after by Parliament *an Act is made Felony which was not Felony before*, the Grantee ſhall not have the Goods of a Perſon attainted of ſuch Felony. Dav. Rep. 15. a. in the Caſe of Cuſtoms. — *So* where the Biſhop of London has *Jura Regalia, and Eſcheats of Treaſon* within his County Palatine, he ſhall not have the *Lands of Tenant in Tail*, attainted of Treaſon. Dav. Rep. 15. a in the Caſe of Cuſtoms.

10. In ſeveral Caſes tho' the Grant of the King *extends to a future Time*, yet it *ſhall be intended of Things preſent* and in Eſſe at the Time of the Grant. Dav. Rep. 15. a. Mich. 15 Jac. B. R. in Ireland. In the Caſe of Cuſtoms.

11. Where there are *Words* in a Grant of the King, *which under a general Name comprehend Things Royal and Things Baſe*, it ſhall be taken in favour of the King; and the Baſe Things ſhall paſs, and the Royal ſhall remain in the Crown. Dav. Rep. 17. a. in the Caſe of Cuſtoms, cites Pl. C. 333. [in the Caſe of Mines.]

Without this Recital C. had not been remitted, but *eſtopped by Acceptance* of the ſaid Patent, to claim any other

12. A. was attaint of Treaſon. 'Tis found by Office, that A. was ſeiſed of the Manor of D. the Day of the Treaſon committed. (where *in Truth C. was in Poſſeſſion, and it was his Inheritance*) The King grants this to B. in Fee. B. reconveys this Land to the King. The Attainder of A. is annull'd by Act of Parliament. The *King* by Patent *reciting C's Right, grants the Land to C.* by Patent. In this Caſe C is *remitted* to his ancient Right in the Manor. By all the Judges of England. Jenk. 196. pl. 4.

Right

Right than by the Patent. Ibid. cites 33 H. 8. Br. Caſes. 206. — The Recital and Grant amounts to a Reſtitution upon Petition of Right. Jenk. 196. pl. 4. (bis.) cites Kelw. 158. 2 H. 7. 17.

13. The Conſtruction made on Grants of the Crown is, That where the *Intention is plain* the Words are taken moſt favourably for the Subject. Per Raymond, Ch. J. Gibb. 308. Trin. 5 Geo. 2. Dr. Bentley v. Ely (Biſhop.)

14. It was objected by Turton, J. That the *general Words* ſhould be conſtru'd *with relation to the Recitals*, which Holt, Ch. J. ſaid was ſo ſometimes; as when the King deſigns a Profit to himſelf; as in a Grant of *concealed Lands*, and not to diminiſh his Revenue. But if there are *Words to ſhew his Intent*, *Non Obſtante* that they are not concealed, there the Patent ſhall be good. Skin. 663. Mich. 8 W. 3. B. R. in the Caſe of the King v. the Biſhop of Cheſter. —— cites Hard. 231.

(O. c. 2) *Difference* between the *Grants of the King and a common Perſon*, as to the Effect thereof.

1. IF the King grants Lands by Letters Patents, and *ſays not for what Time*, 'tis but a Leaſe at Will. D. 270. pl. 22. Marg. cites it as adjudg'd 17 E. 3. and affirm'd by Coke in C. B. Paſch. - - - - Jac. And he denied the Opinion of Choke 5 E. 4. 8. 21 E. 4. 46. Cro. 76. 5 H. 5. 3. Co. Litt. 21. b.

2. *Leaſe* of Dutchy Lands was made by the King *in his Minority*, yet good. D. 209. b. 22. Mich. 3 & 4 Eliz. Anon.

3. By the Common Law the Grant of every common Perſon is taken more ſtrong againſt himſelf, and *more favourable* againſt a Stranger; but Grant of the King is taken more ſtrong againſt a Stranger, and more favourable as to the King; tho' the Thing which he grants came to the King by Purchaſe or Deſcent. Per Weſton, J. Pl. C. 243. Trin. 4 Eliz. in the Caſe of Willion v. Lord Barkley.

4. If the King grants a Manor, Except all *Courts and Perquiſites*, it is good; but in the Caſe of a Subject, it is void. D. 288. b. 54. Paſch. 12 Eliz.

5. The Deed of a Subject has *Relation* only to the Time of the Delivery, and not to the Time of the Date; but the Charter of the King has Relation to the Time of the Date, and not to the Time of the Delivery; inaſmuch as Matters of Record by Preſumption of Law, import Truth in them. Per all the Juſtices. Pl. C. 491. Mich. 18 & 19 Eliz. in the Caſe of Ludford v. Gretton.

S. C cited 2 L. P. R. 140 tit. King.

6. The Grants of the King are favourably interpreted, ſo as *no Prejudice ſhall accrue to the King by Conſtruction or Implication* upon his Grant, any more than he truly intended by it. 5 Rep. 56. Mich. 30 & 31 Eliz. in Knight's Caſe.

So if the King had *granted Land to* J. S. and his Heirs, and in truth J. S. was *his Villein*, *this ſhould not infranchiſe him* by Implication. Ibid. —— And if *two are indebted* to the King, and the *King releaſes to the One*, yet this ſhall not diſcharge the other. Ibid. cites 2 R. 3. 4. 21 E. 4. 46. and 34 H. 6. ——— And if the King *releaſes all Demands*, this ſhall not releaſe a *Right of Inheritance*. Ibid. cites 6 H. 7. 15. and 11 H. 7. 10.

7. If the King has *two Manors* A. and B. and grants *totum illud Manerium de A. & B.* Cum Pertinentiis in the County of C. the Grant is void as to the King. In the Caſe of a common Perſon both Manors would paſs. 1 Rep. 46. a. Trin. 42 Eliz. in Altonwood's Caſe.

8. By the Words (Omnes *terras Dominicales* Manerii de W.) —— In the King's Caſe, Cuſtomary Lands held by Copy, Parcel of the ſame Manor, ſhall not paſs; but otherwiſe it is in Caſe of a common Perſon. 1 Rep. 46. b. Trin. 42 Eliz. in Altonwood's Caſe.

See Preſcription (M) pl. 7, 8, 9.

(P. c) Patents *Allowance.* What Patents need Allowance.

1. THE *Charter of the King granted before Time of Memory* is not of any Value now. 8 H. 6. 4. b.

See Conuſance (D.) * Br. Patents, pl. 27 cites S. C.

2. Conuſance of Pleas granted before Time of Memory **is not of any Value now, if it has not been allowed ſince Time of Memory.** 8 H. 6. 4. b. * 14 H. 6. 12. b.

3. **A Grant** de Catallis of **ſuch Men as ſhall be outlawed in a perſonal Action** before Time of Memory, **is not of Value without Confirmation.** 11 H. 6. 50. b.

Br. Patents, pl. 27 cites S. C.

4. **A** Releaſe of a Corody **by the King to an Abbot before Time of Memory is not any Diſcharge now, if it has not been allowed ſince Time of Memory,** tho' the King never was ſeiſed of the Corody after the Releaſe; **for it is** due of common Right, **if there be no Diſcharge.** 14 H. 6. 12.

Br. Patents, pl. 27. cites S. C.

5. **If the King had granted to one before Time of Memory,** that he and his Heirs ſhould not be impanell'd in any Jury, **yet this ſhall not be any Diſcharge without Allowance, tho' he had never been impanelled afterwards, yet he had not** * **any Means to compel the Sheriff to impanel him.** 14 H. 6. 12. b.

* Fol. 201.

Br. Patents, pl. 27. cites S. C.

6. **If the King before Time of Memory granted to another,** that he and his Heirs ſhould be diſcharged of Toll, **this is not any Diſcharge without Allowance.** 14 H. 6. 12.

9 Rep. 29. a. Per the Reporter.

7. **If a Man pleads the Charter of the King, dated before Time &c.** of Goods and Chattels of Felons, **then he may preſcribe to have it with a Confirmation after Time &c.** Kel. 8. H. 8. 190.

8. **If a Man ſhews the Commencement of** a Sanctuary, **ſcilicet, if he ſhews the Letters Patents of the King, and the** Bulls of the Pope, **dated before Time &c. then he may preſcribe with Confirmation after Time &c. but otherwiſe not.** 8 H. 8. 190.

* Orig. is (D'execution)

9. If *Charter* * *of Exemption of Jury*, or the like, be *ſhewn in the Time of the ſame King who granted it*, there needs no Writ of Allowance. Per Opinionem; but Brooke makes a Quære. Br. Patents, pl. 84. cites 39 E. 3. 25.

10. King H. 2. founded the Abbey of St. Bartholomew in London, and granted that they *ſhould be as free in the Church as the King was in his Crown.* It was ſaid by ſome that the *King was not barr'd of Corody and Penſion* by ſuch general Words, becauſe they are *incident to him as Founder.* Hody, Treſham and Portington held the Grant good; and Portington held it good without Allowance. But Paſton, June and Vamp held it not good without Allowance. Br. Patents, pl. 27. cites 14 H. 6. 12.

11. What *can't paſs without Charter*, is not good without Allowance in Eire; but otherwiſe it is of a Thing lying in Preſcription without Charter; for Uſage makes it as Leets, Waiſes, Strays. Per Coke Ch. J. Roll. R. 194. in Caſe of the King v. Wray.

12. Grants of *Franchiſes and Liberties* muſt be allowed in Eyre; and ſo my Lord Rolls muſt be underſtood in his Abridgment. 2 Mod. 322. Trin. 34 Car. 2. B. R. in Caſe of James v. Trollop.

(Q. c.) Patents Allowance. What Allowance will be *peremptory to the King.*

1. **IF Allowance has been** of Conuſance in Eyre, **this is peremptory to the King.** 44 E. 3. 18.

2. But

2. But if **Conuſance** has been allowed in B. againſt the Law, **yet if afterwards it appears to the Court that it was not well granted before, they ought not to grant it again.** 44 E. 3. 18.

(R. c.) Patents. Grants. [What] ſhall paſs by general Words, with Reference to other Perſon or Thing.

See (I. b.) (K. b) (L. b) (Z. b) (A. c) to (E. c)

1. **WHEN the Charter of the King in general Terms** refers to a Certainty, **it contains as expreſs Mention as if the Certainty had been expreſs'd in the Charter, tho' the Certainty to which the Reference is, be** not of Record, **but lies in** Averment **by Matter en Pais, or in Fact. Co.** 10. * *Whiſtler.* 64. **Reſolved Co.** 9. **Count** *Salop* 46. **b.**

* See (L. b) pl. 1.

(S. c.) *Exemptions.*

See (F. f)

1. **IF the King grants to another to be exempt** of Admiral Juriſdiction of Things within a certain Liberty, **this is not good without giving Power to have Admiral Jurisdiction there**; for if it ſhould be good, **there would be** a Failure of Juſtice. **Trin.** 15 **Car. B. R.** between and *Stidſon.* **Per Curiam. Prohibition denied** in this Caſe to the Court of Admiralty upon this Reaſon, and the Court ſaid that this was ſo reſolved in the Caſe of *Coleherbert.*

No Exemption from ordinary Juſtice may be pleaded, but the Party *ought to ſhew a Juriſdiction within the Place exempted, in what Manner Juſtice may be done*; for the King can't grant an Exemption without ſuch a Proviſion; for a total Exemption from Juſtice can't be. Per Holt Ch. J. Skin. 685. Brown v. Borlace.

2. King H. 4. had granted to the Rector of Edington, his Confreres and Succeſſors, *that when any Tax or Tallage by the Commonalty, or Tenth by the Clergy, ſhall be granted to him*, that *the Rector and his Succeſſors, their Goods, Chattels, Lands and Poſſeſſion ſhall be diſcharged of it*; and that a Tenth was granted to the King by his Clergy, and the Collectors upon their Payment prayed to be diſcharged of 10 l. to be levied upon the Rector, which they could not levy by Reaſon of the Grant aforeſaid; and the Rector came and put in a Plea, containing this Matter, and prayed to be diſmiſs'd; and the King's Attorney demurr'd. And per Forteſcue, the Grant is void; for it *was not in the King at the Time of the Grant.* And per Newton, The Grant here is not good; for *Tenths and Fifteenths are at the Will of the People*; and therefore the King is not Inheritable to it. Br. Patents, pl. 16. cites 19 H. 6. 62.

But Brooke ſays, See that the King is Inheritable to hold his Parliament, and when this is granted, it is Inheritance to the King, as it ſeems; and by the beſt Opinion the Grant is good, and

that the *Rector may plead by Relutter, and ſhall not be compelled to ſue by Petition* of it, nor to have Writ of Covenant againſt a common Perſon upon ſuch a Grant by him, as to hold without Impeachment of Waſt &c. Ibid.

3. In Attaint, a Man ſhewed forth Charter of the King, *That he ſhould not be ſworn in Aſſize Juries nor Attaints*, and prayed Allowance thereof. Quære; For a Juror upon Attaint ſhall expend 20 l. and if hereby there ſhall any Default, then it ſeems that the Charter, by this, ſhall be void; and it is ſaid that Sir Richard Newton diſallowed ſuch Charter for this Cauſe, and ſo he may well by the Words of the Statute of Marlebridge. 14. Br. Exemption. pl. 10. cites 34 H. 6. 23.

For more of this Matter, ſee Trial (A. c. 2) &c.

4. The King granted to the *Burgeſſes of C.*, that they *ſhould not be impleaded Extra their Walls but before the Bailiffs of T. of Things done in T.*

And by ſome the Grant is void; For the King cannot compel a Man to ſue Extra Bancum unleſs he will; But the beſt Opinion was contra; and that *it ſtands with Juſtice* that the King may grant Conuſance of Pleas, and ſo of Grant of Things done in D. to be tried in B. Br. Patents pl. 67. cites 12. E. 4. 17.

D. 52. Marg. pl. 1. ſays, That Glanvil, in his Reading Lent 1629. ſaid, He had ſeen a Patent granted to one that he ſhould not be compell'd *to be Serjeant*, or *Judge*, *or Knight*; And he took this Difference, Such Things as are in the King to make, as to be a Judge or Knight, the King may diſpenſe with; But of ſuch *Things as are in the Election of the People*, tho' the King ſends the Writ to the Sheriff or Coroner to elect *Knight of the Shire or Burgeſs*, he cannot diſpenſe.

6. The King cannot grant a Charter of Exemption to any Man to be freed *from Election of Knight, Citizen, or Burgeſs of the Parliament* (as he may do of ſome inferior Office or Places) becauſe the Elections of them ought to be free, and his Attendance is for the Service of the whole Realm, and for the Benefit of the King and his People, and *the whole Commonwealth hath an Intereſt therein*; and therefore a Charter of Exemption that King H. 6. had made to the Citizens of York, of Exemption in that Caſe, was by Act of Parliament enacted, and declared to be void. And tho' we find ſome Precedents, that *Lords of Parliament* have ſued out Charters of Exemption *from their Service in Parliament*, yet thoſe Charters are holden to be void; For though they be not eligible, as is aforeſaid, yet their Service in Parliament is for the whole Realm, and for the Benefit of the King and his People, of which Service he cannot be exempted by any Letters Patents. And if he hath *Læſam Phantaſiam*, or be extremely ſick, or the like, theſe be good Cauſes of his Excuſe in not coming, but no Cauſe of Exemption; for he may recover his Memory and Health &c. So as the ſaid Precedents were Grants de Facto, not de Jure; for if the King cannot grant a Charter of Exemption from being of the grand Aſſiſe in a Writ of Right, or of a Jury in an Attaint, for the Miſchief that may follow in thoſe private Actions; a fortiori, he cannot grant any Exemption to a Lord of Parliament; For his Service in Parliament is publick for the whole Realm. But if any Lord of Parliament be ſo aged, impotent, or ſick, as he cannot conveniently, without great Danger, travel to the High Court of Parliament, he may have Licenſe of the King under the Great Seal to be abſent from the ſame, during the Continuance or Prorogation thereof; but if the Rehearſal be not true, or if he recover his Health, ſo as he become able to travel, he muſt attend in Parliament; Or without any ſuch Licenſe obtained, if he be ſo aged, impotent or ſick, as is aforeſaid, and yet is amerced for his Abſence, he may reaſonably and honeſtly excuſe himſelf by the Statute of 5 R. 2. 4 Inſt. 49. cap. 1.

Lev. 159. S. C. by the Name of the King v. the City of Canterbury — Raym. 113. S. C. —

7 The King granted to the City of Canterbury, a Privilege to be exempted *from ſerving on Juries out of their City*, excepting only in Caſes of Treaſon; and in expreſs Words that they ſhould not ſerve *Coram ipſo Rege*; And it was agreed by all, that without ſuch expreſs Clauſe, the Grant would not exempt them from ſerving on Juries in the Court of B. R. Sid. 243. Paſch. 17 Car. 2. B. R. The King v. Percival & al. Hard. 389. S. C.

2 Keb. 50. pl. 4. & 54. pl. 14. S. C. by Name of the City of London. v. Swallow.

8. It was agreed per omnes, that though the *Privileges of London* are confirmed by Parliament, the *King may* by his Charter *grant Exemptions* from them. Sid. 288. Trin. 18 Car. 2. B. R. in the Caſe of Swallow v. the City of London.

9. In Replevin, the Defendant avowed the Taking as a Diſtreſs towards the *repairing the Highways*. The Plaintiff replied and ſet forth a Grant from the King for exempting the Lands, where &c. from that Duty: It was argued, that ſuch Grant was not ſufficient, becauſe it was prior to the making this Statute, and ſo before any Cauſe of Action, and Judgment accordingly was given for the Avowant. 3 Mod. 96. Hill. 1 Jac. 2. Brett. v. Whitchot.

10. Exempt Juriſdiction *is* this, and was granted to Cities and Towns orpCorate for Benefit of Trade; it was *a Grant to the Freemen of ſuch a City*

City or Town, *that they ſhould not be impleaded out of their City* or Town; and this Grant was good, if there were a Court in the City or Town, to hold Plea of the Matter. Per Holt Ch. J. 12 Mod. 644. In the Caſe of Croſſe v. Smith.

11. As to an *Exempt Juriſdiction*, that *always is for the Benefit* and Eaſe *of the Reſiants* within ſuch a Vill, Borough &c. not to be ſued out of their Vill &c. And then ſure they may *wave* that Benefit, and remove their Cauſes to the ſuperior Courts; And if one, who is within an Exempt Juriſdiction, be *impleaded out of it, his Way is to plead it*, and the Lord has nothing to do with it. 12 Mod. 666. In the Caſe of Taylor v. Reignolds.

S. P. Per Holt Ch. J. 12 Mod 644 in Caſe of Croſſe v. Smith.

12. Lord Lieutenant of Middleſex is empowered by the 14 *Car.* 2. to inflict a Penalty of 20 l. upon Perſons ſo and ſo qualified for not finding a Horſe &c. to ſerve in the Militia. King Cha. 2. in the 15th Year of his Reign, granted to the College of Phyſicians a Charter of Exemption *from bearing or providing Arms to ſerve in the Militia*, by which Charter another is recited, which was granted to the ſaid College by H. 8. and another by Ja. 1. exempting them from ſeveral Services. It was ſtrongly argued Pro & Con. whether the King could grant Charters of Exemption from *Penalties &c. impoſed by Act of Parliament.* The Court, upon the firſt Argument, declared it a Caſe of great Difficulty, and Conſequence as to the Prerogative of the King, and the general Right of the Subject, and therefore ought not to be determined on a Caſe ſtated. But upon this firſt Argument, the Ch. J. was of Opinion, that the King by his Prerogative could not diſpenſe with an Act of Parliament which was made for the publick Good of the whole Nation; But the Queſtion in this Caſe was, Whether this Statute had diveſted the King of any Part of his Prerogative, or whether it was made to eaſe him of the Care of Arraying Militia, and intruſting the Lieutenants and other Officers therewith; For if it was, then it did not diveſt him of any Authority he had before the Act. Now he was of Opinion, that this Charter did not exempt the Phyſicians from being contributory to the finding Men to ſerve in the Militia, tho' probably it might exempt them from Perſonal Duties; yet it cannot be inferred from thence, that he might exempt them from being contributory to others to perform thoſe Duties which are required by an Act of Parliament, eſpecially where the *Subject hath an Intereſt* that ſuch Duties ſhould be performed, or a Loſs if they ſhould not, and the better Opinion ſeemed to be, that the King could not exempt in ſuch Caſes. That in the principal Caſe, the Contribution to be made to the finding a Man with Arms to ſerve in the Militia, is a *Charge upon the Lands, as well as on the Perſons* of the Owners; and if this Charter of Exemption ſhould be good, it would increaſe the Charge on all the Lands of Perſons not exempted, which would be a very great Damage to ſuch Perſons, becauſe the Phyſicians who are exempted are a conſiderable Body of Men in every County; for which Reaſon it would be very hard if the King had Power to leſſen the Tax impoſed upon one Man, and charge it upon another; Beſides the *King cannot exempt in any Caſe where the Subject hath an Intereſt, As where particular Perſons are bound by Preſcription or Tenure to* * *repair Bridges*, the King cannot exempt them from repairing; becauſe all the Subjects have a common Benefit to paſs and repaſs over publick Bridges; But it was adjourned for a farther Argument. 8 Mod. 18, 19 Mich. 7 Geo. 1721. The Caſe of Sir Hans Sloane, Preſident of the College of Phyſicians.

* S. P. or to make a Bridge; but of Contribution to a Bridge, he may diſcharge as it ſeems; quære. F. N. B. [230] 524. in Notis cites Fitzh. Aſſiſe 445. 3 E. 3.

(T. c.)

Fol. 202.

(T. c.) Exemption. To what Thing it ſhall *extend*.

1. IF the King grants to a Biſhop, quod omnia Maneria, & omnes Terræ & omnia Feoda, of the ſaid Biſhop and his Succeſſors inde in perpetuum libera ſint & quieta of ſuch Foreſt of the King &c. The Biſhop alia Maneria ſua Terras & Homines ſuos clamare non poteſt eſſe quieta de Foreſta, quam illa quæ tempore Confectionis illius Chartæ fuerunt in Seiſina of the ſaid Biſhop. 18 E. 1. lib. Parl. 1. Biſhop of Coventry and Litchfield's Caſe.

2. If the King grants to an Abbot, That he & Homines ſui ſint quieti ab omni Theolonio in omni Foro & in omnibus Nundinis, & in omni tranſitu Portuum Viarum & Marium, per totum Regnum noſtrum & omnia Mercata ſua & Hominum ſuorum &c. The Abbot and his Men ſhall be only quit Ex Præſtatione Theolonii in Venditionibus & Emptionibus per ipſos factis de Neceſſariis ſuis, ut in Victu, Veſtitu, & ſimilibus & hoc ad Opus proprium ipſorum Abbatis, & Hominum ſuorum, ſed ſi prædictus Abbas aut Homines ſui Emptiones, ſeu Venditiones fecerint ut Mercatores communes, & de communibus Merchandiſis & Ratione Merchandiſarum faciend. debent Theolonium, ſicut & cæteri Mercatores communes, Non Obſtante Charta prædicta.

3. No Franchiſe, nor Charter of Exemption, ſhall be *allowed againſt the King*, nor Array ſhall not be challenged againſt the King. Br. Prerogative. pl. 87. cites 38 Aſſ. 19.

Br. Patents, pl. 71. cites S. C. Jenk. 138. pl. 83. cites 21 E 4. 48. The *Abbot of Waltham's* Caſe. S. C. -- And Judge Jenkins ſays this is a good Precedent. Nice Conſtructions of the King's Patents are a Diſhonour to him. —— S. P. Br. Exemption. pl. 14. cites 2 R. 3, 4. And that the King may exempt Clerks from the Collection of Tenths, tho' the Biſhop be inheritable to name Collectors; and that upon ſuch Diſcharge the Biſhop ought to name and certify to the Exchequer another Collector. And if *he who is ſo exempted takes upon him the Collection in one County*, yet he *may plead his Patent as to another County*, if he be aſſigned Collector there. ——— Br. Patents, pl. 90. cites S. C.

4. Grant was made by the King to the Abbot of C. that he *ſhould not be Collector of the Tenths granted per Clerum Angliæ*, and *Tenths were granted by the Province of Canterbury*, and the Abbot was appointed to be Collector of it by the Archbiſhop of C. and pleaded his Patent in the Exchequer to be diſcharged, inaſmuch as this Tenth was not granted per totum Clerum Angliæ; For the Province of York granted nothing. And alſo the Convocation granted that no Perſon privileged ſhould be diſcharged &c. but this is not to the Purpoſe; For this cannot toll the Power of the Grant of the King; And yet Per Cur. the Grant is good, though it be not by all the Clergy; For the Province of Canterbury and York do not intermeddle; And alſo the one and the other is Clerum Angliæ; For if one be bound to pay 20 l. if Men of L. come to B. there if two Men of L. come to B. the Obligor ſhall pay the 20 l. tho' all the Men of L. do not come to B. and alſo the *Patent is Ex certa Scientia & mero Motu*, which is taken moſt ſtrongly againſt the King; Contra of Patent upon Suggeſtion; And the not ſhewing of the Patent in the Convocation Houſe is no Eſtoppel againſt the Abbot; For they can neither allow nor diſallow it there; And it is no Matter tho' the Abbot was one of them in the Convocation who granted the Tenths; For this is Diverſis Reſpectibus, and therefore the Patent and Grant is good. Per. Cur. Br. Exemption. pl. 9. cites 21 E. 4. 44.

5. If the King grants to one a Franchiſe Royal, ſcilicet, That he and his Heirs ſhall be *quit of Toll* &c. If he dies without Heir of the Part of the Father, the Heir of the Part of the Mother ſhall have Advantage of this Diſcharge. Pl. C. 445 b. Paſch. 15 Eliz. in the Caſe of Clere v. Broke alias Cobham.—cites 49 E. 3.

6. The

6. The Queen granted by Letters Patents to Pelham, *that he ſhould not be Bailiff*, Conſtable, *or other Officer* or Miniſter, *licet eligatur*. Adjudged that this Grant ſhall not diſcharge him, if the Queen make him *Sheriff of a County*; for the Word Officer in the Patent, ſhall not extend to Royal Officers; And alſo the making of a Sheriff is not by Election, but by Denomination only of the Queen; ſo that if he have not theſe Words *(Licet eligatur per nos)* he ſhall be Sheriff. Held before the Treaſurer and the Barons in the Exchequer Chamber. And they ſaid it was the Opinion alſo of Ld. Chancellor Bromley. Godb. 21. pl. 28. Paſch. 25 Eliz. Pelham's Caſe.

(U. c) * *Liberties.*

* Liberties in this Place ſignify the Franchiſes and Privileges which the Subjects have of the Gift of a King, as the Goods and as Wreck,

1. **A**MONG the Petitions of the Parliament 18 E. 1. fol. 3. there is ſuch Petition, Prioriſſa de Auribium petit Allocationem Chartarum ſuarum, Fines, Amerciamenta hominum ſuorum, Eſtoveria ſua, Viſum Foreſtarum & plurimas alias Libertates in Nova Foreſta & pro tenentibus in Woodrowe; quæ omnia Rex conceſſit juxta formam Chartarum ſuarum & præcepit Chancellar. &c.

Chattles of Felons, Outlaws, and the like, or which the Subject claims by Preſcription, Waif, Stray &c. 2 Inſt. 47.

2. And among the ſaid Petitions, fol. 2. Radulphus Pipard petit quod uti poſſit Regalibus Libertatibus in Manerio ſuo de H. ſicut Johannes Gifford coram Rege recognovit &c Conceſſum eſt per Concilium quod ſic fiat & Baronibus de Scaccario mandatur in forma prædicta.

3. 12 E. 1. Rot. Walliæ. Memb. 1. The King granted Returnum Brevium to the Biſhop of Bangor &c. 35 E. 1. Rot. Chartar. Memb. 16. ſuch Grant.

4. King H. 3. granted to the Vill of Shrewsbury Authority to take Toll in their Market, ſcilicet, a Halfpenny of every &c. Tr. 43 El. B. R.

5. Rot. Parl. 43 E. 3. n. The City of London, and all other Cities and Boroughs of England pray, That where it is contained in the Great Charter, that they ought to have their Franchiſes which were confirmed by divers Progenitors of the King to ſuſtain their Charges, and among others they have uſed, that none ſhould ſell Merchandizes nor Victuals at Retail, if they were not infranchiſed within the Cities and Burghs, the which Uſage they have had in the Time of all his Progenitors, and in his Time till the ninth Year of his Reign, * which was then taken away, to the Undoing of his ſaid Cities and Burghs; they pray, That it pleaſe the King in this Parliament to confirm their Franchiſes granted to them, notwithſtanding the Statutes and Ordinances made to the contrary, and that none ſell at Retail within the ſaid Cities and Burghs, † if he be not a Man infranchiſed among them, and that no Merchant alien buy of other Merchant alien any Merchandizes nor ‡ Wares within the Cities and Burghs to ſell again. Anſwered, It is aſſented, that thoſe of London and no other ſell at Retail Victual only, and this of the eſpecial Grace of the King till the next Parliament, that it be well ruled and governed in the mean time to the Common Profit; and it is the Intention of the King, that no Prejudice be done to the Aliens who have Franchiſes by Charters of Kings.

* Orig. is (Que lour fait tolne en Anientice-ment de ſes dits Cites &c.)

† Fol. 203.

‡ Orig. is (D'ailes)

6. 7 E. 1. Rot. Pat. Memb. 5. in Dorso. Commiſſion ad Inquirendum ſi Warrinus Filius & Hæres Th. M. habere debeat Furcas ad Manerium ſuum de W. & Judicium de Maleſactoribus ibidem captis pro Feloniis & aliis Tranſgreſſionibus factis eo quod Abbas de Glaſtenbury ipſius hujuſmodi furcas nuper vento proſtratas iterum levare non permittit.

7. 8 E. 1. Rot. Pat. Memb. 1. Cum Hen. quondam Rex Angliæ primus per Chartam conceſſit Radulpho de Monte Caniſio, quod Terræ ejus & homines ſui ſint quieti de Shiris & Hundred. & omnibus querelis quæ pertinent ad Shiras & Hundred. Excepto Murdro & Theſauro, & Willielmus de Monte Caniſio & omnes Anteceſſores ſui virtute Conceſſionis prædictæ habuerunt Viſum Franci Plegii & Turnum Vic. in omnibus Terris & Feodis ſuis donec nos Viſum & Turnum prædictum de hominibus & Tenentibus ſuis in Curia noſtra coram Juſticiariis noſtris ultimo Itinerantibus in Comitatu Cant. per Conſiderat. ejuſd. Cur. verſus præfat. Willielmum diſrationaſſemus Occaſione abuſus earundem Libertat. Nos nunc Viſum & Turnum prædictum in Terris & Feodis ſuis illi reſtituimus &c.

Prynne's Cott. Rec. Abr. 54 21 E. 3. No. 17. —* Orig. is (Apoye.) —† Quære the Engliſh of thoſe Words.

8. Rot. Parl. 21 E. 3. N. 17. The Commons pray, for that the Franchiſes have been ſo largely granted in Times paſſed by our ſaid Lord the King, that all this Land is * almoſt all unfranchiſed, to the great † Areriſement and Eſtenyſment of the Common Law, and in great Oppreſſion of the People. Pleaſe our Lord the King to reſtrain ſuch Grants for the time to come. Anſwer, The King will order, that the Franchiſes which ſhall be granted ſhall be made by good Adviſement.

9. The King made a Corporation, and granted to the Bailiffs and Citizens their Heirs and Succeſſors, *that the Bailiff and Recorder* of the ſaid City *for the Time being, or two of them, of whom the Recorder to be one, Una cum hujuſmodi aliis Perſonis per nos* &c. *ad hoc Aſſignatis, ſhall be Juſtices of Gaol-Delivery for the ſaid City, and that no Sheriff*, or Juſtice of Peace, or other Miniſter or Commiſſioner of the King, his Heirs or Succeſſors &c. *ſhall* in the ſaid City, in any Thing therein to be done *intermeddle* under the Penalty of 100 l. &c. The Queſtion was, Whether the Juſtices of the General Gaol-Delivery of the County might try Felonies committed in the City; And it was held per Popham, Anderſon, and Periam, That they might, becauſe this Patent, as to holding a Gaol-Delivery by the Bailiffs and Recorder, is void; for they have no Authority but jointly with ſuch as the King ſhall appoint; And that Appointment the King is not obliged to make; but if he does make it, it muſt be by Patent, and not otherwiſe; and therefore they cannot have a joint Authority with the Bailiffs, whoſe Authority (if they have any) muſt ariſe from their Patent; and ſo at ſeveral Times; ſo that the King is deceived in his Grant, in miſtaking the Law; and therefore the Grant is not good. 1 And. 296. Anon.

See (I. b) pl. 1, 2, 3.

(X. c) In what Caſes they ſhall be *extinct by coming to the Crown.*

1. IF the King grants certain Manors which are within his Foreſt of D. to a Biſhop and his Succeſſors, and grants further, that they ſhall have the ſaid Manors free and acquitted of the ſaid Foreſt and Pleas of the Foreſt &c. And after the ſaid Manors come into the Hands of the King, and he reſtores them to the Biſhop, yet the Biſhop

Biſhop ſhall not be exempt from the Foreſt for thoſe Manors. 18 E. 1. lib. Parl. 2. The Biſhop of Coventry and Litchfield's Caſe.

2. A Liberty to have *Wreck as appendant to his Manor* ſhall be extinct by *Eſcheat* to the King. Keilw. 137. b. Itin temps E: 3.

So a Liberty to have *View, Waif, Infangthief* &c. as appendant to his Manor ſhall be extinct by Eſcheat to the King. See Keilw. 147. a. b. Itin. temps E. 3.

3. It was adjudged in B. R. that where a Man *has Returna Brevium* which *comes to the King by Unity of Poſſeſſion or* otherwiſe, the King ſhall uſe it as well as his Tenant, or him by whom the King claims, and ſo this Unity of Poſſeſſion in the King does not extinguiſh the Liberty; Quod Nota &c. Keilw. 72. a.

S. C. cited per Hale Ch. B. Vent. 407. ——S. C. cited per Turner J. Vent. 402. who ſays it is only a Miniſterial Thing.

4. If the *King purchaſes a Manor to which Franchiſes Royal are regardant, and* after *gives the Manor Simul cum Libertat. ad illum ſpectant.* no Liberties paſs; For by the Purchaſe, the Franchiſes of common Right was annexed to the Crown. Br. Extinguiſhment, pl. 32. cites 43 Aſſ. 10. per Thorp.

Br. Incidents, pl. 12. cites S. C.——*Contra, if he gives* the Manor *cum Libertate ad illud ſpectant. Tempore quo Manerium fuit in manibus* of *the Feoffor*; For they were extinct before as it ſeems, and by him, by thoſe Words they paſs as Appendants. Ibid.——Br. Incidents, pl. 12. cites S. C.

5. *Unity of Poſſeſſion* of Liberties in the King is an Extinguiſhment. Br. Quo Warranto, pl. 11. cites 15 E. 4. 7.

When a Franchiſe is ſeiſed into the Hands of the King it is extinct; For it *ſhall not be ſaid Franchiſe in his Hands.* Br. Quo Warranto, pl. 9. cites 15 E. 4. 10.——*For if I have Fair or Market* of the Grant of the King, *and I grant it to the King*, he takes it of me by Way of Extinguiſhment. Ibid.

Liberties which the King would have himſelf throughout England if not granted to or preſcribed for by a common Perſon are *merged* in the Crown, if a common Perſon that had them by Grant or Preſcription commits a *Forfeiture* of them, or they come otherways to the King, and the King has them by his Prerogative; and they cannot afterwards be granted but by a new Creation, as *Waif, Stray, Wreck &c.* But ſuch Liberties as a common Perſon has by Grant or Preſcription which the Kings (if ſuch Grant or Preſcription had not been) could not have by his Prerogative, as *Warren, Park, Fair, Market with Toll &c.* if theſe come to the Crown &c. they remain in Eſſe, and are not extinct; For if the King ſhould not have them, by this Means they would be loſt. Cro. E. 591. Mich. 39 & 40 Eliz. B. R. Heddy v. Wheelhouſe.

6. A *Manor, to which Wreck belonged by Preſcription*, came to the King's Hands, who granted to A. the Office of Admiral, with all Wrecks at Sea, and all Profits to the ſaid Office belonging; this does not paſs the Wreck Appurtenant to the Manor. 12 Mod. 259. Hill. 11 W. 3. B. R. Wiggan v. Branthwaite.

Fol 204.

(Y. .c) * Liberties. *Seiſure.*

See Franchiſe (F.)

1. **Among the Petitions of Parliament 18 E. 1. there is ſuch a Petition,** Cives London petunt, quod Rex velit eis concedere priſtinum ſtatum, **ſcilicet,** Majorem &Antiquas Libertates Rex non habet inde Conſilium quia ſunt in bono Statu ut ſibi videatur, & hac Vice Statum non mutabit, ex quo Omnia bene fuerint ut Omnia ſint in Pace, & nullum Commod. apparet.

* Liberties are of three Kinds; 1ſt. Thoſe which are *Ancient Flowers of the Crown*, for the King as Felons Goods &c. the which if they are forfeited Judgment may be of Ouſter or Seiſure; may have them again. 2dly A *Thing newly created*, the *which the King cannot have*, As a Corporation, the which, if it commits a Forfeiture and Judgment of Ouſter be given, in ſuch Caſe there *needs no Seiſure*; for to what Purpoſe ſhall there be a Seiſure by the King, when he may not have it? The ſame Law of a *Judgment of Seiſure, as forfeited*; for this amounts to a Judgment of Ouſter. Otherwiſe of a *Seiſure Quouſque.* 3. There are Things *newly created*, as *Markets* &c. the which may *ſubſiſt after Seiſure* by

by the King; and in ſuch Caſe, tho' Judgment of Ouſter be given, there ſhall be a Seiſure for the King. Skin. 311. Hill. 3 W. & M. B. R. The King v. the City of London —— 12 Mod. 18. S. C.

2. Among the ſaid Petitions of the Parliament of 18 E. 1. fol. 5. there is ſuch Petition, Libertates de Norwich captæ fuerunt in manus Domini Regis quas petunt Homines ejuſdem ſibi reſtitui; faciant finem pro tranſgreſſione & ſimiliter tenetur debitum integraliter quod Allocationem qua & fiat eis ad Scaccarium Juſtitia.
Quia Homines de Southampton verberaverunt & vulneraverunt uſque ad Mortem Gilb. Canon qui exequebatur Præceptum Regis in dicta Villa, pro tranſgreſſione Villæ capta fuit Villa iſta in Manum Regis, & finem fecerunt. Et firmam ſuam exaltaverunt ad 20 l. per Ann.

3. 13 E. 1. Rot. Fin. Memb. 10. Pro Civibus de Norwico, Reſtitution after taken into the Hands of the King Pro Combuſtione Eccleſiæ &c.

If the *Defendeant maks Default* in Quo Warranto, the *Franchiſe ſhall be ſeiſed into the Hands of the King, and the King ſhall be anſwered of the Profits*, and if he *does not replevy them within the Eyre*, he ſhall loſe the Franchiſe for ever. Br. Quo Warranto, pl. 7. cites It. Canc. 6 E. 2. 7.

4 If one who has a Franchiſe *does not come at the firſt Day of the Eyre*, then his Franchiſe ſhall be ſeiſed into the Hands of the King, and he ſhall make a Fine, and ſhall have his Franchiſe by Replevin. Keilw. 152. b. 6 E. 1.

5. Aſſiſe of *Bread and Ale, Pillory and Tumbrel*, are appendant *to View of Frankpledge*, where a Man has it by Grant of the King; and if he *does not uſe Pillory and Tumbrel*, he ſhall loſe his Franchiſe. Br. Quo Warranto, pl. 8. cites It. Canc. 6 E. 2.

6. If one *vouches Record* of a Franchiſe, and at another Day ſhews the Charter; quære if he ſhall forfeit his Franchiſe by Failure of the Record. Keilw. 138. a. Itin. Temps E. 3.

7. Liberties *claimed* by one *as appendant* to the Manor of B. were ſeiſed into the Hands of the King, becauſe the *Franktenement* of the ſaid Manor *was not in him who claimed them.* Keilw. 139. b. pl. 7. Itin. Temps E. 3.

8. In Quo Warranto, if *one claims Warren as Appendant* to his Manor, and *another claims it as Appendant* to his Manor, *and makes Default*, Judgment ſhall be that the Franchiſe be ſeiſed, but *ceſſet Executio* till the Inqueſt be paſs'd. Keilw. 148. b. Itin. Temps E. 3.

So the *Biſhop of Durham* pretending to have ſuch Privileges, that the King's Writ ought not to run there, *impriſoned one becauſe he brought the King's Writ thither*; and therefore an Information being exhibited againſt him, and this Offence prov'd, it was adjudged that he ſhould pay a Fine to the King, Et quod capiatur, and ſhould loſe his Liberties for his Time; and the Entry upon the Roll is, That he ſhall loſe his Liberties, becauſe Juſtum eſt quod punietur in eo quo peccat. Cro. C. 253. in Tyndall's Caſe. cites 33 E. 1. Rot. 101.

9. A *Prohibition* was awarded out of C. B. *to the Biſhop of Norwich, and he excommunicated the Perſon who ſerved him with the Writ*; and thereupon the Party brought his Action, and declared upon all this Matter, and the Biſhop being found Guilty, it was adjudged that his Temporalties ſhould be ſeiſed until he abſolved the Plaintiff, and ſatisfied the King for the Contempt of his Writ; and Damages to the Party of 10000 l. and this Judgment was affirm'd in Error brought in B. R. Cro. C. 253. ſays ſuch Precedent was ſhewn of Trin. 21 E. 3. Rot. 46. or 460.

S. P. 2 Inſt. 282 ——— S P. Keilw. 139. a pl. 5. Itin. Temps E. 3 ——— S. P. And not that it ſhall be forfeited; for it does not appear whether there be Cauſe of Forfeiture And no Man ſhall finally loſe his Land or his Franchiſe upon any Default, if he has never appeared. By the Judges of both

10. In Quo Warranto the *Writ was returned ſerved*, and the *Defendant did not come*, and *Venire facias iſſued returnable in another Term, which was returned ſerved*, and *he did not come*, and therefore the *Franchiſes were ſeiſed*; and for the Default of the Defendant Judgment was, that it be * *ſeiſed* into the Hands of the King. Br. Quo Warranto, pl. 9. cites 15 E. 4. 10.

both Benches. Jenk. 141. pl. 91. cites 15 E. 4. 7.——*But* it was ſaid, that if a Man *has uſed Franchiſe without Title*, Judgment ſhall be that he be *ouſted*. Br. Quo Warranto, pl. 9. cites 15 E. 4 10.——*But* if he *miſuſes a Franchiſe which he has by Title*, the Judgment ſhall be that the Franchiſe *be ſeiſed* into the Hands of the King. Ibid.——* Britton, cap. 19. page 30. (55) (57.)

Quo Warranto was brought *for uſing* certain Liberties, viz. *Fairs, Markets and Courts*; *At the Day of Return of the Writ Defendants did not appear.* It was agreed by the whole Court, that if they *do not ſhew good Cauſe in Excuſe of their Default*, their Liberties ſhall be ſeiſed into the King's Hands, according to the Book in 15 E. 4. 2 Roll. Rep. 92. Trin. 17 Jac. B. R. The King v. the Mayor &c. of Wygorne in Lancaſter.

11. Writ of *Error to remove a Record out of B.* and the *Bailiffs did not ſend it, nor come till the Pluries*, which is a Proceſs of Contempt, *and took Day to bring it in*, and *failed at the Day*; and by ſeveral their Franchiſe ſhall be reſeiſed, viz. their Conuſance of Pleas; quære. Br. Reſeiſer, pl. 29. cites 20 E. 4. 5. Br. Franchiſes, pl. 26. cites S. C.

12. The Abbot of C. had a *Gaol*, wherein diverſe Men were impriſoned, and becauſe he *detained ſome, that were acquitted* of Felony, *after their Fees paid*, the King ſeiſed the Gaol for ever. 2 Inſt. 43. S. C. cited in 9 Rep. 96. b. Hill. 9 Jac. in Sir George Reynell's Caſe, as 20 E. 4. 5. b. the Abbot of Crowland's Caſe.

13. If *Steward of a Liberty arraigns a Man by Colour of Infangthief*, and *adjudges him to Death*, the Liberty ſhall be ſeiſed by this, but the Steward ſhall ſuffer no Pain; for he did it Colore Libertatis, and therefore no Felony; quod nota. Br. Corone, pl. 173. cites 2 R. 3. 9. 10.

14. If a *Vill be incorporated* by Letters Patents before Time of Memory, and thoſe *Franchiſes never uſed ſince Time of Memory*, they have loſt their Franchiſes. Br. Franchiſe, pl. 10. cites 14 H. 7. 1. Per Vaviſour. Non-uſer of a *Liberty* doth not *determine it*, nor any Preſcription which goes with it. Arg. Godb. 238. Mich. 11 Jac. C. B in Caſe of Cowper v. Andrews.

15. If a Lord does *not make Hue and Cry* within his Franchiſe, Lord Coke ſays, it ſeems that he ſhall loſe his Franchiſe for ever; for the Words of the Statute are, That the King ſhall take to himſelf the Franchiſe (viz. as forfeited.) 2 Inſt. 173.

16. The Non Uſer of a *Fair*, or *Market*, or *Courts*, or ſuch like Liberties, wherein the Subjects may have Intereſt for the Common Profit or Common Juſtice, is *Cauſe of Seizure* of them; But the Non Uſer of *Parks* or *Warrens*, or ſuch like, which are *to the Profit or Pleaſure of the Owner only*, is not any Cauſe of their Loſs or *Forfeiture*. Per Coke, Ch. J. ſaid to have been ſo adjudged. Cro. J. 155. Paſch. 5 Jac. B. R. Leiceſter-Foreſt's Caſe. — Affirm'd by Popham; but he ſaid, it had been about the ſame Time adjudged otherwiſe in the Exchequer. Ibid.

17. In Caſe of Preſcription for *Warren within Foreſts*, altho' it had *not* been *uſed for divers Years*, if he that had it, had it by Grant, or can prove it by Preſcription, a Non Uſer is no Cauſe of Forfeiture thereof. Reſolved. Cro. J. 155. in the Caſe of Leiceſter-Foreſt.

18. There is a *Diverſity* where the *Liberties are ſubordinate and dependent* the One upon the Other; there the miſuſing and *abuſing* of a Liberty *is Forfeiture of all the Liberties*; *but* otherwiſe it is where the Liberties *are ſeveral*. Arg. And Montague, Ch. J. held it clearly ſo. And Doderidge, J. accordingly; But if one miſuſe and *abuſe the Fair*, he *forfeits the Court of Pie-powders*, becauſe it is incident to the Fair. 2 Roll. 1 Rep. 156. Hill. 17 Jac. B. R. in the Caſe of the King v. the Warden of Maidenhead.

19. The *Franchiſe* &c. of a Body Politick *may be ſeiſed* or ſurrendered &c. and the *Body itſelf remain untouch'd*, as appears in the Biſhop of Norwich's Caſe, and more clearly in the ſame Caſe after in Jones, Fulchard and Haywood's Caſe; for *Franchiſes* &c. are *not eſſential* to a Corporation, but a Privilege pertaining to it. Skin. 311. Hill. 3 W. & M. in B. R. The King v. the City of London.

(Y. c. 2) *Pleadings* of Letters Patents, Exemptions &c.

1. HE, who would *make Title to a Franchiſe by Grant* of the King *inroll'd in Chancey*, without ſhewing the Charter, ought to have the Record ready. Keilw. 140. a. Itin. temps. E. 3.

2. In Quare Impedit, where a *Man would intitle himſelf to an Advowſon becauſe the King was ſeiſed, and granted it to J. and E. for Life by Patent, and after granted the Reverſion to three in Fee*; there, *if he will plead the firſt Patent or Grant for Life*, he ought to *ſhew certainly the Date and the Year, Day, and Place*; for if the other will ſay, *Nul tiel Record*, it cannot be certified,* [nor] exemplified, if he does not plead it certain. Per Priſt. But, Per Danby, it ſuffices to ſay and plead the Patent of the Grant of the Reverſion in this Form, &c. That the *King, by his Letters Patents, bearing Date* &c. *reciting, that where he had granted the Advowſon to J. and E. for Term of Life*, he *granted the Reverſion to three in Fee, who granted it to the Defendant* &c. and then well; But, Per Priſot, if he will plead the firſt Patent, he ſhall plead it certain. Br. Pleadings, pl. 58. cites 38 H. 6. 35.

* In the ſmaller Editions of Brook the Word (Ne) is inſerted, but in the larger Edition it is omitted

3. In Aſſiſe upon Grant of the *Office of Clerk of the Crown in Chancery* he need not ſhew if there was ſuch an Office at the Time of the Grant, or not; For, Per Catesby, the King by this Word *(Conceſſimus)* may grant an Office which had Eſſe before; but by thoſe Words *(Conſtituimus & Ordinavimus)* he may make an Office and Officer which had not Eſſe before. Br. Patents. pl. 21. cites 9 E. 4. 11.

4. A Patent, or Record, *ſhall not be pleaded by Rehearſal, but by Matter in Fact*. Br. Pleadings. pl. 110. cites 21 E. 4. 44.

3 Le. 193. pl. 240. cites S. C. by Name of Barn's Caſe.

5. In *Treſpaſs* the Defendant *juſtified* the Taking *as his proper Goods*, and pleads a ſpecial Juſtification; the Plaintiff *replied, and made Title* to the Goods *by a Seizure*; for that the King by Letters Patents dedit & conceſſit to the Town of L. *Liberty of a Market* &c. and ſhewed a ſpecial Cauſe of Seiſure, as an Officer there; and upon Demurrer the Plaintiff had Judgment. Error was brought, and it was aſſign'd for Error, becauſe the Plaintiff had *made a Title by Letters Patents*, but did *not ſay, Sub magno ſigillo* Angliæ confectas; And this was held clearly an Error; for if the Grant was not under the Great Seal, it was not good; and tho' he ſaith, that it was inroll'd in Chancery, yet this is not good; for any Patent may be inroll'd there, and therefore the Judgment was revers'd. Cro. E. 117. Mich. 30 & 31 Eliz. B. R. Kingdon v. Barne.

6. King James by Letters Patents inrolled in B. R. *granted* to the Earl of Southampton *all Deodands* within the Manor of Titchfield; an Inquiſition was certified in B. R. that a Deodand was forfeited within the Manor, and Proceſs went out &c. Upon a Motion in Behalf of the Coheireſſes of the Earl, for the Direction of the Court, Whether they ſhould be oblig'd to ſet forth their Title in Pleading, which would be inconvenient, and the Charge exceed the Value of the Deodand, the Court ſaid, That if they could *ſatisfy the Office of their Title without pleading it*, that ſhould be ſufficient *in regard the Letters Patents were inrolled in this ſame Court*. 1 Vent. 142. Trin. 23 Car. 2. B. R. Earl of Northampton's Heir's Caſe.

(Y. c. 3) Pleadings of Letters Patents of Grants, Exemptions &c. And in what Caſes there muſt be Profert or *Monſtrance* of them.

1. IF a *Gift in Tail* be by the King *by his Letters Patents*, which is *executed*, yet the Heir ſhall not have Formedon againſt the Letters Patents. Per Martin, clearly. Br. Monſtrans. pl. 2. cites 2 H. 6. 14.

The King *gave* to the Earl of Rutland *in Tail, and after intended to give it to him in Fee-Simple, and to extinguiſh the Tail*; and it was doubted, that the Surrender of the Letters Patents of the Tail, and the Cancelling thereof, and of the Inrollment, and Bill aſſign'd would not extinguiſh the Tail; for the *Tail executed may be averr'd* without ſhewing the Patent, and Formedon lies after the Tail executed, without ſhewing the Patent. Br. Patents. pl. 97. cites 32 H. 8.

2. Where a Man brings *Debt againſt the Cuſtomer*, or Debt is aſſigned to him to be paid by the King and *Tally of Exchequer*, he need not ſhew this Tally to the Court upon his Declaration, as in Debt upon Obligation; for the Debt does not ariſe only by the Tally, but by the Aſſignment by the Record, and the Tally is only to deliver to the Cuſtomer to take Allowance of it upon his Account. Nota, Br. Monſtrans. pl. 8. cites 27 H. 6. 9.

3. A Man can't *juſtify as Servant* of the King without ſhewing Patent. Br Aid del Roy. pl. 12. cites 33 H. 6. 29.

4. If a Man pleads *Letters Patents in the Court where they are inrolled*, the Party may plead them * without ſhewing Deed, and it is ſufficient, *notwithſtanding that they were never pleaded before*; quod nota; Per the Juſtices. Br. Monſtrans. pl. 124. cites 21 E. 4. 48, 49.

* S. P. Br. Pleadings. pl. 110. cites 21 E. 4. 44. — S. P But if *recorded in any other Court*, he muſt plead them with a Profert in Curia, or the Exemplification of them under the Great Seal. Per Holt. 2 Salk. 497. Roberts v. Arthur.

5. Note, If a Man pleads *Letters Patents* made to the Abbot of St. Alban's, *that he ſhall make Juſtices of the Peace within his Liberty, and that no other Juſtices ſhould intermeddle there*; and that he was *indicted there before the Juſtices of the Peace of the County*, who ſat within the Liberty, and therefore a void Indictment; Per Fineux, Chief Juſt. he ſhall not ſhew the Patent. Br. Monſtrans. pl. 172. cites 13 H. 7. 14 & 20 H. 7. 6.

6. Where a Man is a *Stranger* to the Patent, and *does not claim any Thing within it, nor does any Act in Right of the Grant*, he ſhall plead the Patent without ſhewing it; Per Pollard. Br. Monſtrans. pl. 172. cites 13 H. 7. 14. and 20 H. 7. 6.

Contra, where he *claims any Thing* by it, *or juſtifies* by the Grant. Ib.

7. Formedon of a Gift of Land by the King by Letters Patents. Fiſher ſaid, If a Man *loſes his Letters Patents*, he may have new Letters Patents out of the Chancery, if he ſhews to the Chancellor that he has loſt them, Quære inde; for it ſeems that he ſhall have only a *Conſtat*, et non negatur ibidem. But 'twas admitted upon the Argument, if he ſhews the Letters Patents of the Gift of the King or [does] not, but [ſhews] that he has loſt his Letters Patents and has a new Patent, that is intended a *Conſtat*, as it ſeems to me, that in this Caſe it *ſhall ſerve* him *to ſhew or plead* as well as the firſt Patent. Br. Patents. pl. 58. cites 22 H. 7. 12, 13.

8. In *Treſpaſs* the *Defendant ſaid, that* the Place where &c. was 10 Acres of Land, of which *the King was ſeiſed in Fee* in Right of his Crown, *and* by his Letters Patents *granted the Land to the Lady Carew for* Term of *Life, who leas'd to the Defendant for Years, and averr'd the Life of the firſt Leſſee*, and ſo juſtified; and it was moved, if the Plea be good without ſhewing the Letters Patents of the King; and it was held clearly

S. C. cited 10 Rep 92. a. Hill. 3 Jac. in Dr. Leyfield's Caſe.

clearly by Knightly, Montague, and Fitzherbert, that he ought to ſhew the Letters Patents. But Browne, Willowby and Baldwin econtra. And it ſeemed by them, that there is a *Diverſity* when the *Grantee* of the King *grants over all his Intereſt*; for there the Patent belongs to the Grantee, and therefore he ſhall ſhew them; but when he *grants only Parcel*, it is otherwiſe &c. D. 29. b. pl. 199. Hill. 28 H. 8. Anon.

9. It was enacted Anno 4 *H. 7. cap* 9. That *no Man ſhould convey Wine into the Realm out of Gaſcoigne but in Engliſh Ships* &c. *and where the Maſter and Mariners were Engliſh* &c. upon Pain of Forfeiture. And *H. 8. granted Licence to* a Man, Anno 9, That he, his Deputies, Factors, or Aſſigns, might *convey* &c. *in any Ship* whatſoever, *Non Obſtante the ſaid Statute*, 600 *Tunn of Gaſcoign-Wine, without mentioning any Thing of the Mariners* &c. And by the Statute made Anno 32 H. 8. cap. 14. it is enacted, that the ſaid Statute ſhall ſtand in full Force and Virtue, ſo that from henceforth no Perſon ſhall attempt to do contrary to the Tenor and Effect thereof, upon the Pain limited in the ſaid Statute. And one R. was ſued by Information in the Exchequer for 40 Tunn imported into the Realm Contra Formam &c. R. *pleaded this Licence as Aſſignee* for the 40 Tunns, *without ſhewing the Patent* of the King, *and alſo without ſhewing Deed of Aſſignment*; *but* he *averr'd* by Preſcription, that there is *a Cuſtom among Merchants, that he who has ſuch Licence may aſſign it by Parol* &c. *without averring the Life of the firſt Grantee*. And upon this Plea, it was demurr'd in Law. And by the beſt Opinion the Plea is not good without ſhewing the Letters Patents. D. 54. a. pl. 17. Mich. 34 H. 8. Richards's Caſe.

10. The *Patentee* of the Queen *made a Leaſe* of the Lands to another. Per Periam, J. the Leſſee ought to ſhew the Letters Patents, for he deriveth his Intereſt therefrom; and he ſaid, that if any Books were againſt his Opinion it was marvellous. Godb. 111. pl. 133. Mich. 28 & 29 Eliz. C. B. Anon.

11. *Tho'* the Patent is *in Court*, yet it ought to be pleaded with a Hic in Curia Prolat. 3 Bulſt. 58. Trin. 13 Jac. The King v. Capell.

See (M. 2) pl. 6. S. 2.

(Y. c. 4.) *Grants to the King. What may be granted or aſſigned* to him.

1. BROOKE makes a Quære, If a Man's *Beaſts* are *diſtrain'd*, if he may *give them* to the King *before he has replevy'd them*; and ſays, It ſeems he cannot. Br. Prerogative. pl. 36.

Br. Grants. pl. 83. cites 1 H. 8. 29. That Brian held the Grant of an Office of Foreſter in like Manner in Tail, Remainder to the King in Fee, is not good, becauſe he can be Officer to no Man; But that the whole Court held the contrary for the Reaſon above, and that the Office may be forfeited. —— Grant of an *Office* is good to the King, *tho' he cannot be an Officer*; for Office may be forfeited to him, and he may grant over the Office; and ſo of Annuity. Br. Prerogative. pl. 125. cites 1 H. 7. 29. Per tot. Cur.

2. If a Man gives Land in Tail, Cum omnibus officiis ea tangentibus, or gives to *J. S. an Office with all Lands to the ſame belonging*, the *Remainder to the King* in Fee; This is a good Remainder (tho' the King cannot be Officer to any Man) becauſe he may grant it over. Br. Done. pl. 51. cites 1 H. 7. 31. Per Brian.

Br. Recognizance. pl. 19. S. C

3. The King *cannot receive a Surrender of Letters Patents to himſelf, nor Recognizance*, but the Chancellor or other Juſtice ſhall do it. Br. Prerogative. pl. 135.

4. P. was *Collector* of the Subſidy granted by Parliament, and by reaſon thereof *was indebted to the Queen*; and one *B. being indebted to him, P. aſſign'd the ſaid Debt to the Queen for Parcel of her Debt*; upon which Proceſs iſſued out againſt B. And now at the Return of the Proceſs, it

was

was moved in Behalf of B. that the Aſſignment was not good, for that *no Aſſignment of Debt* to the Queen *is effectual where the Goods and Lands of the Queen's Debtor are ſufficient*; But here Conſtat de claro that P. is ſufficient. And Per Fenner, there is not any Authority in our Law for ſuch Aſſignments of Debts to the Queen. 4 Le. 80. pl. 170. 29 Eliz. in the Exchequer. Pigot's Caſe.

5. If *A.* be *bound to B.* by Obligation with Condition *for the Performance of Covenants*, altho' the Covenants, or ſome of them, be for the Payment of Money, yet the Aſſignment of ſuch Bonds to the Queen ſhall not be received; and if it be aſſign'd, it ſhall be put out of Court; for *no Bonds ſhall be aſſign'd* as above, *but* ſuch as are made *for the Payment of Money*. 4 Le. 9. Mich. 33 Eliz. in the Exchequer. Sir John Hawkins v. Chapman.

6. *A. and twelve others were poſſeſs'd of* diverſe *Trees* by the Grant of the Owner of the Soil, and the ſaid *A. for* and in *Satisfaction of a Debt*, which he ow'd *to the Queen*, *aſſign'd* to her by Deed inroll'd *all the Trees*; and the Queſtion was, If the Queen ſhould have by this Aſſignment all the Trees. Coke, for the Defendant, did agree, that where the Queen came to an entire Thing by Act in Law, as Attainder or other Act in Law, ſhe by her Prerogative ſhall have the whole; but where ſhe comes to have Part of the Chattle by the Grant of a common Perſon, he by his Grant ſhall not prejudice his Companion; and therefore, in that Caſe, the Queen ſhall not have her Prerogative. Quære of this Difference. The Barons did not ſpeak to the Caſe, but they ſaid it was ſtrong againſt the Defendant; and they gave him Day to take Advice, if he could ſay any other Matter. Cro. E. 265. Mich. 33 & 34 Eliz. The Queen v. Fairclough.

7. A *Man recover'd Damages* in an Action on the Caſe, *and* he *aſſign'd Parcel of this Debt to the Queen* before Execution, and the Queen thereupon brought a Scire facias. Manwood, Ch. B. and all the Court held clearly, that Parcel or a Moiety of this Debt could not be aſſign'd over to the Queen. Ow. 2. The Queen v. Allen.

8. 7 *Jac. cap.* 15. *No Debt ſhall be aſſign'd to the King by &c. any Debtor or Accomptant, other than ſuch* Debts *as did before grow* due originally to the King's Debtor *or Accomptant, bona fide.*

All Grants and Aſſignments of Debts to the King &c. contrary to the true Intent of this Act, ſhall be void.

P. was bound in a Statute of 2000 l. to C. who dying Inteſtate, Adminiſtration was committed to his Wife, who married F. which F. became bound with others to the King in 600 l. and then he and his Wife did, by Deed inroll'd in the Court of Wards, aſſign this Statute to the King for Payment of the ſaid Debt of 600 l. to the King, which was payable at certain Days after the Aſſignment. And it was reſolv'd, that this Aſſignment was good, notwithſtanding this Statute; for the Purpoſe of this Law was, that no Debtor of the King ſhould procure another Man's Debt to be aſſign'd which was a common Practice; but this was F's *own Debt, tho' not to his own Uſe*, which he may himſelf releaſe and diſcharge, and by the ſame Reaſon may aſſign. Hob. 253. Breadman v. Coales. —— Cro. J. 524. Hill. 16 Jac. S. C. by Name of Fawn's Caſe.

(Y. c. 5) Grants to the King. *Aided or Conſtrued.* How.

1. 34 & 35 *H.* 8. 21. ENacts, that *the King ſhall hold and enjoy all Honours, Lands, and other Hereditaments, which he has obtained ſince the 4th of February in the 27th Year of his Reign, or ſhall hereafter obtain, within 7 Years next after the making of this Act, by Bargain, Exchange, or Purchaſe, notwithſtanding any Miſ-recital, Non-recital, or not naming the ſaid Honours &c. or of the Place where they lie, or of any Part thereof, or any other Matter or Cauſe whatſoever.*

The Right of others is ſaved, ſave only for Rents, Services, and Rentſecks.

2. The Words of *Gifts of Subjects* made *to the King by the Parliament* ſhall be *taken moſt ſtrong for the King* where they have two Intendments; Per Saunders one of the King's Serjeants, who ſaid it was as a Rule. Pl. C. 11. a. Paſch. 4 E. 6. in Caſe of Reniger v. Fogaſſa.

3. 35 *Eliz.* 3. Enacts, that *all Abby Lands which came to the Hands of H.* 8. *ſhall be adjudged to have been in his actual and lawful Poſſeſſion, notwithſtanding any Defect, Want, or Inſufficiency of, or in any Surrender, Grant, or Conveyance thereof, or of any Part thereof made to the ſaid King, or any other Matter or Cauſe whatſoever whereby he might be intitled thereunto.*

The Prior of M. was ſeiſed of an Advowſon and 22 Acres of Land, and 20 H. 8. the King licenſed him to appropriate. The 21 H. 8. the Biſhop who was the Ordinary aſſented, that after the Church ſhould become void, the Prior might hold it Appropriate. The 27 H. 8. the Incumbent died; ſo that the Appropriation took Effect, and was united to the Poſſeſſion of the Rectory Appropriate, and alſo of the Land out of which Tithes were due to the ſaid Prior in reſpect of the ſaid Rectory. The Priory is diſſolved, and the Impropriation and Lands given to the King by the 31 H. 8. who granted the Impropriation to one, and the Lands to another. 2 Brownl. 25. Priddle v. Napper.

——S. C. 11 Rep. 8. b. Mich. 10 Jac. The firſt Point was, If the Appropriation was good or not? 2dly, If it was not good by the Common Law, Whether the Statute of 35 Eliz. cap. 3. has ſupplied the Imperfection thereof or not? As to the 2d. Point, (admitting the ſaid Appropriation had been void) it was objected, that this Act of 35 Eliz. had made it good, it being thereby declared, *That all Manors, Lands, Tenements, and Hereditaments, which at any time heretofore were the Poſſeſſions of an Abby, Monaſtery, Priory &c. which after the ſaid 4 Feb. 27 H. 8. were granted or conveyed, or mentioned ſo to be in or by any Letters Patents whatſoever by H. 8. to any Perſon &c. were and ſhall be reputed taken, and adjudged to have been lawfully and perfectly in the actual and real Poſſeſſion of the ſaid late King, and of his Heirs and Succeſſors, at ſuch time as the ſame were granted by him.* And where it was anſwered by the Plaintiff's Counſel, that this Act of 35 Eliz. extends only to Letters Patents made by H. 8. and that the Letters Patents in the Caſe at Bar were made by Queen Eliz. and therefore out of the Statute of 35 Eliz. it was reſolved, and ſo the Truth is, that this Statute extends not to this Caſe, but not for the Reaſon alleged by the Plaintiff's Counſel; For tho' it be true, that Queen Elizabeth granted the Inheritance of the ſaid Rectory, yet it appears by the ſpecial Verdict, that H. 8. by Patent indented had demiſed the ſaid Rectory to W. P. for 21 Years, and this Act of 35 Eliz. provides, That all Manors &c. mentioned to be granted &c. in or by any Letters Patents whatſoever made by H. 8. to any Perſon or Perſons, Bodies Politick or Corporate, ſhall be reputed, taken, and adjudged to have been lawfully and perfectly in the Actual and Real Poſſeſſion of the ſaid King, his Heirs and Succeſſors. In which Proviſo four Things are obſervable: 1ſt. The favourable Peninng thereof, viz. *mentioned to be granted*, tho' in Effect Nothing paſſed by the Grant. 2. The generality of the Words, firſt, in reſpect of the Quality of the Letters Patents, viz. *in or by any Letters Patents whatſoever*, be they under the Great Seal, Exchequer Seal, the Court of Augmentation Seal, the Dutchy Seal &c. Secondly, In reſpect of the Eſtate or Intereſt mentioned to paſs by the Letters Patents without Reſtriction to any in certain; So that if they purport Grant for Life or Years, the Statute has as great Operation as to the Proviſo, as if the Patents had purported a Tail or Fee. Thirdly, the Generality of the Proviſo; For it extends not only to make the Grant good, but alſo to veſt the Manors &c. of the late Abbots &c. in the Actual and Real Poſſeſſion of H. 8. and likewiſe (fourthly) in his Heirs and Succeſſors. And ſo the *Proviſo extends to three other Caſes.* 1ſt. Where any Lands &c. *came to the Hands or Poſſeſſion of the ſaid late King H.* 8. 2dly, *Or which were put in Charge to or for his Highneſs in his Court of Exchequer, or any other Court of his Majeſty's Revenue.* 3dly, *Or by any Auditor or other Officer of the ſaid late King.* And in every one of thoſe Caſes, the Proviſo has as great Operation as in Caſes of Letters Patents, as to the veſting ſuch Lands &c. in the King, his Heirs and Succeſſors; But yet it was reſolved, That this Act of 35 Eliz. extends not to this Caſe; For the Proviſo has a Qualification or Reſtraint which has not been mentioned before at the Bar, viz. That in the ſaid four Caſes ſuch Lands &c. ſhall be reputed, taken &c. in the Actual &c. Poſſeſſion of the King, his Heirs &c. at ſuch time as the ſame did ſo come to his Hands or Poſſeſſion, or were ſo put in Charge, or granted, or conveyed by H. 8. as aforeſaid, *notwithſtanding* 1ſt. *any Defect &c. of or in any Surrender, Grant, or Conveyance of the ſaid Manors &c. or any Part thereof, to the ſaid H.* 8. 2dly, *Or any other Matter or Cauſe whatſoever by which his Highneſs was, or might have been intitled to the ſame.* So that the Scope of the Act was to veſt in H. 8. all the Lands &c. which the Abbots &c. had, notwithſtanding the Defects aforeſaid. But if the ſaid Appropriation was void, and was not given to the King by the Statutes of Monaſteries, then the Prior had nothing in the ſaid Rectory beſides the Advowſon and Jus Præſentandi. Notwithſtanding which this Act of 35 Eliz. has great Effect; For ſince the 31 H. 8. gives not to the King any Monaſteries &c. but ſuch only as had been ſurrendered, granted &c. or diſſolved, this of 35 has ſupplied the Defect &c. of a Surrender, as of an Inſufficient Surrender, Grant, or Conveyance, ſo that be there any Surrender &c. or not, or be it, if any, ſufficient or not, the ſaid Lands &c are actually veſted in the King, his Heirs &c. 2dly, If the Abbot &c had been *diſſeiſed* &c. where an Office, Scire Facias, Seiſure &c. had been requiſite to veſt the Poſſeſſion in the King, there the laſt Words, viz. *or any other Matter or Cauſe whatſoever by which his Highneſs was or might have been intitled to the ſame*, ſupplies all ſuch Means whereby the King might lawfully have been intitled and put in Actual Poſſeſſion. But tho' there be a Defect in the Appropriation, yet if the Rectory be *in Reputation appropriated, and been uſed as ſuch*, it was given to the King by the Statute 27 H. 8. cap. 38. or 31 H. 8. cap. 13. Note, that in the Statute of Monaſteries there is a ſaving of Rights &c. but the Founders, Donors &c. are excepted out of the Saving; ſo that they are bound by the Body of the Act. 11 Rep. 8. b. 11 b. Mich. 10 Jac. Priddle v. Napper.

4. 43 *Eliz.* 1. Enacts, that *all Grants made to the Queen ſince the 8th of February in the 27th Year of her Reign, (except by Eccleſiaſtical Perſons, or Bodies Politick, not having Power or Ability to make ſuch Grants) are confirmed.*

The Right of all others is ſaved, except of the Parties and Privies to ſuch Grants.

(Z. c) *Grant to the King.* How the Grant may be. In what Caſes *without Record.*

See (B. d)

1. **A Man cannot grant** Land in Fee **to the King without Matter of Record. Contra.** 50 Aſſ. 1.

It was held, that if a Man will give *Land to the King and to his Heirs*, the *which he will veſt in his Body Natural*, and not in his Body Politick, the *King cannot take it by Livery, but* it ought to be *by Matter of Record.* Pl. C. 213 b. Mich. 4 Eliz. in the Caſe of the Dutchy of Lancaſter.——The *Prerogative* of the King *requires Matter of Record to bring Lands to* the Hands of *the King* as well as to toll or remove it from him; Per all the Juſtices. Pl. C. 484. b. Mich. 17 & 18 Eliz. in Caſe of Nicholls v. Nicholls.

2. **A Man cannot grant** the Services of his Tenant in Fee, or for Life, **to the King without Matter of Record. Contra.** 50 Aſſ. 1.

3. The King cannot be infeoffed but by Deed inrolled of Record; *For no Livery can be made to him*; Quod nota bene. Br. Prerogative, pl. 66. cites 5. E. 4. 7.

S. P. Br. Prerogative, pl. 93. cites 7 E. 4. 16.—In Quare Impedit it was agreed, that *Feoffment* made *to the Uſe of the King of a Manor*, veſts nothing in him; For he cannot take unleſs by Matter of Record; For he cannot have Feoffees to his Uſe. Br. Prerogative, pl. 41. cites 21 H. 7. 21.

4. No Parlance ſhall bind the King, and he *cannot take* any thing *but by Matter of Record*, as by Deed inrolled. Brooke ſays Quære; For others are of a contrary Opinion. Br. Prerogative, pl. 70. cites 14 E. 4. 2.

Gift to the King without Deed is good, and the ſame of Gift by him of Chattles is good as it ſeems clearly. Br. Prerogative, pl. 36. cites 37 H. 6. 11.—Br. Done, pl. 16. cites S.C. of *Goods* without Deed as ſome held, but Contra it ſeems of *Land* clearly; and

5. The King cannot take Land *by Gift in Poſſeſſion or in Remainder* unleſs by Deed inrolled; and *otherwiſe* it is *by way of Concluſion*, As where the Tenant in Fee Simple *prays Aid* of the King, alleging that he holds for Term of his Life, Remainder to the King. Br. Prerogative, pl. 56. cites 1 H. 7. 28.

6. If a Man *gives Land in Tail, the Remainder to the King*, this Remainder ſhall not paſs to him before the Deed be inrolled, and *when it is inrolled it ſhall paſs Ab initio*; and ſo ſee that it ſhall not paſs by Livery to the Tenant in Tail, and yet it ſhall paſs by the Inrolment after. Br. Prerogative, pl. 57. cites 1 H. 7. 30, 31. per Brian and Collow.

Br. Relation, pl. 20. cites S.C.

7. The King cannot take a *Surrender* without Matter of Record; Per Whiddon and Portman J. Pl. C. 105. a. Mich. 2 M. 1. in Caſe of Fulmerſton v. Steward.

Keeling ſaid, it had been adjudged, that a Surrender of a Copyholder to the King, Lord of a Manor, was good without Matter of Record. Keb. 720. Paſch. 16 Car. 2. in Caſe of Lee v. Boothby.

8. If A. makes a *Feoffment to the King* of Lands, which is *not recorded*, the King takes nothing by this Deed. If an *Eſcheator finds an Office of this* Feoffment made as above, and not recorded, and returns the ſame into Chancery; If the Land be in the King's Hands, the Chancellor upon a Motion will, by a Superſedeas, reſtore A. to the Land. If the *King*

King has granted it to another, a Scire facias ſhall be awarded againſt the Patentee, and the Chancellor ſhall reſtore A. For it appears in the Chancery, that the ſaid Office, Patent, and Deed are all void. Jenk. 123. pl. 50.

(A. d) *What* ſhall be ſaid a *ſufficient Record.*

* S. P. Br. Taile & Dones &c. pl. 38. cites 35 H 8 that the Tail by this is not Extinct. S.C. cited D. 355. a. pl. 37. Marg. —— Yelv 30. Hill. 45 Eliz. S. C. adjudged accordingly.

1. IF * Tenant in Tail, or any other particular Tenant, ſurrenders their Letters Patents in Chancery to be cancelled, **there needs not any other Inrolment of this Surrender**; **For** the Remembrance made of it **is ſufficient Record to paſs it to the King. Mich. 42. 43. El. B. R. per Popham agreed.**

2. So **if Tenant in Tail ſurrender his Eſtate** per Chartam ſuam de Libertam de Recordo in the Exchequer, **this is ſufficient without Inrolment thereof; For this is a ſufficient Matter of Record to intitle the King. M. 42. 43. El. B. R. between** *Abraham and Wilcoks*, **per Curiam, præter Popham.**

For the King takes not by the Inrolment, but by the Deed, ſo that the Deed is the Principal, and the Inrolment but Teſtimony that the Deed is of Record; And tho' it is uſually ſaid in the Books, that the King cannot take but by Deed inrolled, this is to be intended only that the Deed made to the King be recorded, yet it is not ſufficient to make Deed of Land to the King, and caſt it into the Exchequer, or other Court of Record, or after that ſuch Deed is made, to leave it in Court, but the Party ought to deliver it of Record in Court, and to be *indorſed* by the Officer *Quod venit J. S tali Die, and delivered ſuch Deed to the Uſe of the King*, and then this countervails Inrolment. Per tot. Cur. Nullo contradicente.

And the Prayer of the Leſſor to have it inrolled was indorſed, but not inrolled, and

3. **If a Man** makes Leaſe for Years of Land to the King, and after acknowledges it before certain Commiſſioners appointed for the ſame Purpoſe, and the Leſſor prays that it be inrolled, and the Commiſſioners return it accordingly, **yet the King ſhall take nothing by this Leaſe without Inrolment; For this is not ſufficient Record to intitle the King. Tr. 8 Ja. B. Scacc.** *Sir Edward Dimock's* **Caſe. Adjudged.**

yet it was adjudged againſt the King, that the Grant was not good. See Lane 31. 35 & 36 a. the Arguments of the Counſel and of the Court 6 Jac. and Trin. 7 Jac. in the Exchequer. S. C.

Fol. 205.

4. **If** Leſſee for the Life of the King renders and delivers up his Letters Patents in the Chancery Ad Cancellandum. **This without more is not any ſufficient Record to intitle the King to it. M. 5 Ja. Scacc. Sir** *Robert Johnſon's* **Caſe.**

And. 229. pl. 245. Paſch. 32. Eliz. Anon. S.P. But there it was held that the Land paſſed without Inrolment, and cited the Opinion of Belknap, 49. E. 3 5. 37 H. 6. 11. and alſo this Caſe of D. 355. but ſays, That Wray, Dyer, Bell, and Manwood were of this ſame Opinion; and it was further moved, if it might be yet inrolled or not, and it was held by the greater Part that it might tho' divers held the Contrary, and their Reaſon was, becauſe it was made and acknowledged in the Time of another King, and he being dead it is not to be inrolled —— And D. 355. Marg. pl. 37. ſays, That Sir Tho. Egerton, Maſter of the Rolls in Mr. Aldſworth's Reading in Lincoln's Inn in Lent 38 Eliz. ſaid, That when he was Attorney, he had Occaſion to demand the Opinions of Wray and Manwood Chief J. and Chief Baron, who then denied their Opinion ever to have been as Dyer here has reported; and they ſaid, That there *is no Foundation that the King cannot take but by Matters of Record*; For he ſaid, that the King is intitled in many Things which are in Filaciis in the Rolls, and in the Memorandums in the Exchequer; and yet theſe are Titles ſufficient for the Queen. —— About the 35th of Eliz. this Caſe came in Queſtion again between the * Dean and Canons

5. A Deed of Gift *Bargain and Sale* was made to E. 6. by the late Duke of Somerſet in Fee, and was *acknowledged to be inrolled* before a Maſter in Chancery, and alſo before the Chancellor of the Augmentations, and *delivered into Court, and there put into a Cheſt, but not yet inrolled*; The Attorney General moved it might lawfully be enrolled now, and thereby the Lands to veſt in the Queen as Heir, or Purchaſor; and it ſeemed by the Opinions of Wray, Dyer, Bell, and Manwood, that it cannot be to veſt any Intereſt in the Queen, according to 5 & 7 E. 4. & Br. Tit. Done 37 H. 6. D. 355. pl. 37. Hill. 19. Eliz. Anon.

Canons of Windsor and Middlemore, and by the Resolution of all the Justices of England, it was agreed, that the Deed might be inrolled now, and so it was, and so Middlemore was ousted of his Term; and it was also debated in the Parliament House, and there also agreed accordingly; And it was also resolved by all the Justices, that the Acknowledgment of the Deed before the Master in Chancery, and the Delivery thereof into the Augmentation Court, does not make it a sufficient Record before Inrolment, to vest the Interest in the King; But when it is inrolled now, with another Date, it vests the Interest in the King with Relation; For all Persons are estopped to say, that it was not inrolled according to the Date, as appears in the Case of **Lutford v. Gretton**, Pl. C. 419. b. But the contrary is held at this Day; For if it be in Filaciis, or any where among the Memoranda of the Exchequer, it suffices for the King. D. 355. Marg. pl. 37. ——— *S. C. cited Mo. 676 pl. 920. by Lord K. Egerton, and said it was resolved upon Conference, that the King, by the bringing and leaving of the Deed in Court, took well enough without Inrolment.——— Hutt. 1. Pasch. 15 Jac. **Combes v. Inwood**, the Court delivered their Opinion, that if there was a Deed by which the Land then in Question was conveyed to H. S. and that was brought into the Court of Augmentation, although this Deed be not found nor inrolled, yet it is a sufficient Record to intitle the King, and it *is a Record by being brought into Court, and there received to be inrolled*; And the Report in D. 355. 19. Eliz. was not as it is there reported; For it was for Borme's Inn, and it was adjudged a good Conveyance.

A *Deed* to the King *of* certain *Land acknowledged* before a Judge, or Master in Chancery, *and delivered into Court*, but *not recorded by the Neglect of the King's Officer*, is good to the King. Jenk. 124. in pl 50.

(B. d.) *How* the King may take; where *without Record. Chattels.*

See (Z. c.)

If a Man devise Goods or Money to the King by Parol, **yet the King shall have it. 40. Ass. 35. Tr. 8. Ja. Scacc. per Bromley.** If a Man *devises to the King by Parol*, and *without Deed or Testament*, the *King* upon Suggestion of this *shall have Action, and it was awarded* by Judgment against W. C. who was Executor of R. C. his Father, who had devised his Goods to the King by Parol, *that Execution shall be made of the Goods of the Deceased, in whosoever Hands they were found*, and against the Occupiers; For *the Occupation of Goods of the King shall charge him against the King*, and The Testator had devised to the King 1000 Marks which were in a Coffer, The *Executor said, That* at the Time of the Death of the Testator he was at London, and *never had occupied the Goods* of the King, *But his Mother had made full Administration, and* W. *after her Death* &c. *occupied the Goods of his Mother, Absque hoc, that he occupied the Goods of R.* And after he was examined upon Oath and confessed &c. that he had occupied two Manors, which R. and his Father had, and paid before hand, by which it was awarded, that the King have Execution of the 1000 Marks of the Goods of the Deceased, and that first Execution shall be made of the Farms which W. had confess'd, and *the Averment that he had held against his own Corusance shall be held for Nul.* Br. Surmise, pl. 5. cites 40. Ass. 35.——Br. Prerogative pl. 50. S. C. —— Br. Prerogative, pl. 145. cites S. C.

2. **If a Man** lease Land for Years to the King by Deed, **the King shall take nothing by it without Inrolment of the Deed. Because it** is Real. **Tr. 8. Ja. Scacc. Sir** *Edward Dimock's* **Case adjudged.** And tho' it be only a Chattel Real, yet Chattels Real participate in divers Qualities with Inheritances and Freeholds; Per Bromley Baron. Lane. 60. S. C.

3. Lessee for Years **cannot** surrender to the King in Reversion **without Deed inrolled.** S. P. by Altham, baron. Lane 61. in Sir Edward Dimock's Case.

4. **If a** Bishop lease Land for Years to the King by Deed inrolled, and this is confirmed by the Dean and Chapter. **This** Confirmation is good without Inrolment; **Because this passes no Interest, but is only an Assent. Tr. 8. Ja. Scacc.** *Sir Edward Dimock's* **Case. Per Curiam.** Lane 31. 35. & 60 argued and adjudged. Put 10 Rep. 67. b. Trin 11 Jac. in the Church-wardens of St. Saviour's Case.

5. **If** Lessee for Years of the King surrenders **his Patent to the King** in the Chancery ad Cancellandum, and pays the Fees, **yet the Estate is not surrendered before Record or Vacat made thereof, enter'd. P. 11. Ja. B. R.** *St. Saviour's* **Case. Hill. 11. Ja. B.** *Abraham's* **Case.** It was resolved, that the Delivery of Letters Patents into Chancery to be cancelled by the Hands of the Party, without Writing was sufficient, and as much as they ought to do, and it belongs to the Lord Chancellor, or his Officers to cancel them, and every one ought to do that which to him belongs.

S. P. Br. Prerogative, pl. 40. cites 31. H. 7. 19. quod fuit conceſſum.

6. An *Obligation* may be granted to the King by the Obligee, tho' it be a *Choſe en Action*, and the King may bring an Action upon it, tho' the Grant be *by Deed without Inrolment*. Br. Choſe en Action. pl. 4. cites 21 H. 7. 19.

Brooke ſays, and ſo ſee that the King ſhall take a Choſe in Action by Grant of another, and *may ſue in in his own Name*; Contra of a Common Perſon; And ſo it ſeems that the King may take Chattle or Choſe in Action, which is not Frank-tenement, *without Deed inrolled* Br. Prerogative pl. 40. cites 31 H. 7. 19.

7. *An Uſe* cannot veſt in the King by Will or otherwiſe, without Matter of Record, any more than Frank-tenement, or Inheritance &c. D. 74. a. pl. 17. Mich. 6. E. 6. in a Caſe of Exceptions taken to an Information.

(B. d. 2) *Entry by the King, Congeable* in what Caſes.

1. A *Tenant for Life*, the *Remainder to the Heir in Ward of the King*. If A. had *aliened*, the King might have entered, and if a *Condition, which deſcended to ſuch Heir, had been broken*, the King might have entered for the Heir, quod nota; but Brooke ſays, It ſeems that the Matter *ought to be found by Office*. Br. Entre Cong. pl. 126. cites 19 E. 3. & Fitzh. Garde. 113, 114.

2. A Man *leaſed for Life rendring Rent with Re-entry*. The *Tenant committed Felony*, and Proceſs iſſued to the *Exigent*; and *Mean between the Exigent* awarded, *and the Outlawry, the Leſſor re-entered* for Non-payment, and well, becauſe the King had not entered, nor was ſeiſed before it. Br. Entre Cong. pl. 114. cites 27 Aſſ. 50.

But where a Common Perſon is put to his Action, As for Waſt, Ceſſavit, Debt upon Recognizance for a Condition broken &c. there if *ſuch Matter* be *found* for the King, he cannot enter, but it *is put to his Scire facias*; Quod nota; per Frowike, Mordant, and others. Br. Entre Cong. pl. 93. cites 2 H. 7. 20, 21 ——— Br. Prerogative, pl. 63. cites 12 H. 7. 19 S. C.

3. Where a *Common Perſon may enter for Eſcheat Ward, Mortmain* &c. if *ſuch Matter* be *found for the King by his Office*, the King may enter. Br. Entre Cong. pl. 93. cites 12 H. 7. 20, 21.

4. By the Statute 10 H. 4. the *Poſſeſſions of the Dutchy* were *ſeparated from the Poſſeſſions of the Crown*; ſo that in all Things *concerning theſe Poſſeſſions the King muſt demeane* himſelf *as a Subject*, and not with his Prerogatives as King. But a *Difference* has been held upon the ſaid Statute, That *where* the *King, as Duke of Lancaſter is to do any Action inſeparable in Perſon*, there he ſhall enjoy his Prerogative to excuſe his Perſon; *But* in Actions *concerning the Poſſeſſions of the Dutchy*, he ſhall have ſuch Advantage only as the Duke of Lancaſter had; therefore upon great Debate in the Dutchy Court, it was adjudged, That were the King *made a Leaſe of Dutchy Lands, reſerving Rent with a Clauſe of Re-entry* &c. that *he muſt demand the Rent* before he can re-enter; becauſe it is a material Advantage to the Tenant, that the Rent ſhould be demanded before he ſhould receive any Damage which might happen for Non-payment; And that Demand is a Thing *which may be* made *by an Attorney*. Arg. Mo. 161. in the Caſe of Saffron-Walden. — cites it as* Bonny's Caſe.

*Mo. 189. S. C. adjudged.

5. Tho' by the Statute 33 *H.* 8. *cap.* 20. the *Lands of Perſons attainted of Treaſon ſhall be in Actual Poſſeſſion of the King, without Office found*; yet if a Diſſeiſee is attainted of High Treaſon, the King hath only a Right by the Attainder, and ſhall not have the Poſſeſſion without a Scire facias, or Seiſure at the leaſt; Becauſe when a Stranger is ſeiſed at the Time of the Office found, the King ſhall not be in Poſſeſſion till Seiſure, and with this agrees Stamf. Prerog. 54. 17 E. 3. 10. 29 Aſſ. 30. 21. E. 4. 1. Beſides, *all Poſſeſſions &c. are ſaved by the ſaid Act*, as if the Act had

not

not been made, and therefore the Poſſeſſions of the *Diſſeiſor* is ſaved thereby, in the ſame Manner as if a ſpecial Office had been found by the Common Law. 3 Rep. 11. Trin. 26. Eliz. in the Exchequer, the ſecond Reſolution in Dowtie's Caſe.

The *Queen granted* Lands *reſerving* a Fee-Farm *Rent, with a Condition of Re-entry for Non-payment*, and afterwards the *Queen granted this Rent to J. S. in* Fee; the Rent was behind; and adjudged, That the Queen ſhall Not Re-enter, becauſe by that Means ſhe would defeat her own Grant, which would be a Tort to the Grantee of the Rent. Cro. Eliz. 69. pl. 23. Mich. 29 & 30 Eliz. Cranmer's Caſe.

(B. d. 3) Entry upon the King, or his Patentee. What is to be done.

1. IF the *King ſeiſes* the *Ward which belongs to another* Perſon, yet he cannot enter at full Age, but *ſhall ſue to the King*. Br. Entry Congeable, pl. 62. cites 26 Aſſ. 57. Per Thorp & tot. Cur.

2 If the King be *ſeiſed by Reaſon of an ill Office*, the *Party* who is ouſted *ſhall have Aſſiſe*; Per Huls clearly. Br. Office devant &c. pl. 7. cites 7 H. 4. 46.

As where it is *found that the Tenant of the King died ſeiſed of my Land*, yet *his Heir ſhall have Livery, and I cannot enter before Livery*; but after Livery I may have Aſſiſe, and ſhall be no longer bound by the Office; for the *King by his Seiſure ſhall not have Franktenement*, but only Chattel, *and ſo the Franktenement not out of the Party*; and therefore *otherwiſe* it ſeems *where King by Office is intitled to the Fee*, and gives it over, there it ſeems that the Party cannot enter. Ibid.

3. Where the *Eſcheator ſeiſes Colore Officii*, or by Reaſon of an Office, *which is inſufficient*, and does not intitle the King, *As by Outlawry in an Action Perſonal* &c. there the Entry of the Tenant is ſufficient upon the Eſcheator; for the *King ought not to ſeiſe but to take the Profits*. Br. Entry Congeable, pl. 1. cites 9 H. 6. 20.

So where it is *found that J. N. who is outlawed in Treſpaſs, was ſeiſed of my Land*, *and he enters*, I may ouſt him. Ibid.——*Contra* where the *Eſcheator ſeiſes by Writ where the King has no Title*, there the Party cannot enter; note the Diverſity. Ibid.

4. Where the *King* is *intitled by double Matter of Record*, a Man *has no Remedy unleſs by Petition*. Br. Entre Cong. pl. 128. cites 10 H. 6. 15

As if a Man be *attainted of Treaſon or Felony*, and it is *found by Office that he was ſeiſed at the Time* &c. of ſuch Land &c. and the *King grants it over*, he who Right has *cannot enter, nor have Action, nor Traverſe to the Office*, but is put to his Petition. Br. Entre Cong. pl. 128. cites 10 H. 6. 15.——*And* it was agreed, that *if the Eſcheator or other enters to the Uſe of the King without Title*, yet the Party can't enter; for the King is ſeiſed, and yet the King is no Diſſeiſor. Br. Entre Cong. pl. 128 cites 35 H. 6. 61.—*But* if the King grants it over, the Party *may enter upon the Patentee*. Br. Entre Cong. pl 128. cites 35 H. 6. 61——*But* where the King is *intitled by Office*, and grants it over, *tho' it be falſe* Office, the *Party cannot enter upon the Patentee*, but is put to his *Traverſe* of the Office; Per Laicon & Needham; & non Negatur. Br. Entre Cong. pl. 128. cites 35 H. 6. 61.——S. P. Br. Entre Cong. pl. 5. cites 35 H. 6. 60——S. P. Br. Entre Cong. pl. 96. cites 4 E. 4. 21. 22. 25.——S. P. Br. Traverſe de Office, pl. 32. cites S. C.——S. P. Br. Traverſe de Office, pl. 52. cites 10 H. 6. 15. And Brooke ſays, Note the Diverſity thereof; for where he cannot enter upon the King by Reaſon of a Record for the King, which ſtands in Force, there he cannot enter upon the Patentee; quod nota bene; for the Title remains, and the Patentee is in by the King.——S. P. But where the King is intitled to Land by Office, and *another has Rent-charge or Common out of it*, and the King after grants the Land to J. S. there he who has Rent-charge may diſtrain or uſe his Common; for the Grantee nor the Commoner *is not out of Poſſeſſion by ſuch Office*. Contra, if he has Title to the Land; note the Difference. Ibid.

5. It was *enacted by Parliament, That* the Lord Hungerford *ſhould be attainted of Treaſon, and forfeit his Lands*, with a Proviſo, *that of ſuch Lands whereof he was ſeiſed to the Uſe of others*, that *Ceſty que Uſe might enter*; yet where the King is ſeiſed, he cannot enter upon him, but *ſhall ſue Ouſter le Main*. And ſo it ſeems that the King is not bound by any Statute, unleſs by expreſs Words of the King; As if it had been that he might

might enter as well upon the Poſſeſſion of the King as upon others. Br. Entre Cong. pl. 134. cites 4 E. 4. 21.

So if a *Man gives Land rendering Rent, with* Clauſe of *Re-entry*,

6. If a *Man diſſeiſes the King's Tenant*, and *the Diſſeiſee makes continual Claim*, and the *Diſſeiſor dies ſeiſed*, and *Office is found* for the King, by which he ſeiſes, the Diſſeiſee cannot enter upon the Poſſeſſion of the King by the continual Claim. Br. Entre Cong. pl. 97. cites 5 E. 4. 4.

and the *Land comes to the King*, and the *Rent is Arrear*, the Donor can't enter upon the Poſſeſſion of the King. Br. Entre Cong. pl. 97. cites 5 E. 4. 4.

7. A Man can't enter *upon the King and another*; and this ſeems to be, where the King and another are *jointly ſeiſed*. Br. Entre Cong. pl. 101. cites 14 E. 4. 2.

8. It was agreed for Law, That if *Land eſcheats to the King, which is in Leaſe for Years, or charged with a Rent-charge*, and *Office is found* for the King of the Eſcheat, [but] the *Leaſe or Grant not found* in the Office, the Leſſee cannot enter, nor the Grantee cannot diſtrain; but if the *King grants the Land over*, the Leſſee may enter, and the Grantee may diſtrain. Br. Entre Cong. pl. 125. cites 33 H. 8.

9. *But* a Man who *claims Franktenement* in the Land, can't enter without *traverſing the Office*, as it ſeems. Br. Entre Cong. pl. 125. cites 33 H. 8.

(B. d. 4) *Seiſin of the King.* In what Caſes the King ſhall be ſaid to be ſeiſed or poſſeſs'd. And of what Things he may be put out of Poſſeſſion.

Br. Reſeiſer, pl. 10. cites S. C.

1. THE *King ſeiſed the Poſſeſſion of a Prior Alien in Time of War*; and therefore the King has Poſſeſſion there, and not only the Profits. Br. Seiſin, pl. 11. cites 21 E. 3. 44.

2. The King ſhall not be ſaid ſeiſed *by Seiſin of his Servant, unleſs it be in his Advantage, and by his own Agreement.* Br. Error, pl. 130. cites 39 Aſſ. 18.

Br. Seiſin, pl. 37. (bis) cites 5 E. 4. 4.

3. None can *gain Franktenement by any Entry made upon the Poſſeſſion of the King*, or *upon Farmer of the King*; for a Man by Entry may diſſeiſe a common Perſon, but not the King. Br. Prerogative, pl. 79. cites 2 H. 4. 7.

But of *Things Local* he cannot have Action, As *Precipe quod reddat, Ejectment of Ward*, and the like;

4. The King *may be put out of Poſſeſſion of Things Tranſitory*, and ſhall have thereof Action, As *Raviſhment of Ward, Quare Impedit* &c. Br. Prerogative, pl. 55. cites 1 H. 7. 19. and 4 H. 7. 1.

for of thoſe he cannot be put out of Poſſeſſion. Ibid. — *And* ſo ſee elſewhere, that *of Things tranſitory* the King ſhall be adjudged in Poſſeſſion without Office, As *Ward, Villein, Stray, Heriot* &c. and of thoſe he may be put of Poſſeſſion. Ibid. —— *But* of *Things Local or Permanent*, as of Land &c. it appears there, and 4 H. 7 1. that the King is not in Poſſeſſion till Office found; and there, when Office is found, he cannot be put of Poſſeſſion; quod nota. Ibid.

And where it is found that his Tenant *ceas'd by two Years*,

5. Where the King is *initled to* [*Land by Reaſon of*] *Waſt done by his Tenant for Life*, he is not in Poſſeſſion of the Land, but ſhall have Scire facias. Br. Scire facias, pl. 122. cites 14 H. 7. 23.

he ſhall have Scire facias, and is not in Poſſeſſion of the Land. *Contra of Office of Alienation of Mortmain, or* of *Eſcheat*; note the Difference. Ibid.

But Brook makes a Quære if the *Anceſtor of the King*

6. *Where a common Perſon may lawfully enter* by any Title, there if *ſuch Title be found for the King* by an Office, the *King ſhall be adjudged in Poſſeſſion without Scire facias* againſt the Tenant; *but where a common Perſon* by his Title or Matter *cannot enter*, but is put to his Action,

tion, *as in* Caſe of *Ceſſavit or Waſt*, there if ſuch Matter be found for the King by Office, he is not in Poſſeſſion by the Office, but ſhall have Scire facias againſt the Tenant to give him Anſwer; note the Difference. Br. Scire facias, pl. 143. cites 21 H. 7. 18.

Tenant in Tail had diſcontinued, if the King being now Heir to it

might be in Poſſeſſion by Office found thereof, or ſhall have Scire facias in Nature of Formedon, or Cui in Vita. It ſeems that he ſhall have Scire facias. Br. Scire facias, pl. 143. cites 21 H. 7. 18.

7. Where *Ceſty que Uſe is attainted of Treaſon, and* it is *enacted by Parliament that he ſhall forfeit his Land in Poſſeſſion and in Uſe*, there the King is only a Purchaſor. Br. Livery, pl. 58. cites 29 H. 8.

Contra if he had been *ſole ſeiſed, and* had been *attainted by the Common Law*; for there the King has the Land as King. Ibid.

8. By Seizure of the Land of *Tenant in Tail, or for Life*, who is *attainted of Felony*, the King *has the Poſſeſſion, and not the Profits only*. Br. Reſeiſer. pl 10. cites Vet. N. B. Tit. Eſcheat.

So it ſeems of Lands ſeiſed into the Hands of the King *for Alienation without Licence*, where the Lands are *held of the King in Capite*. Ibid. — *So* it ſeems elſewhere *of a Ward*. Ibid — *And of Anno, die et vaſto*; but quære of this. Ibid — *But* upon *Outlawry in perſonal Actions* the King ſhall have only the Profits. Ibid. —— Br. Seiſin pl. 9. cites S. C.

9. If the King's *Tenant for Life dies*, the Franktenement in Law is in the King immediately. Per Brown. Pl. C. 229. b. 3 Eliz. in the Caſe of Willion v. Barkley.

So if the *Tenant of the King dies without Heir*, the Poſſeſſion

in Law is immediately in the King without Office; for *Office is not requiſite but where the King ſhall take thereby. As* if the King makes *a Gift in Tail upon Condition*, and the *Condition is broken*, there it ought to be found by Office. Per Brown. Pl.C. 229. b 3 Eliz. in the Caſe of Willion v. Lord Barkley.

(C. d) *Quo Warranto. Of what* * Things it lies.

See Hundred (E.)

* See Britton. cap. 19.

1. A Quo Warranto lies of the Wreck of the Sea, as appears among the Petitions in Parliament of 18 E. 1. Fo. 6.

2. The Quo Warranto *was framed for Franchiſes which belong to the Crown*; and ſuch as the Subject has are derived from the Crown, Libertates Regales ad coronam ſpectantes ex Conceſſione regum a Corona exierunt. 2 Inſt. 496.

3. Quo Warranto lies *not of ſuch Liberties as do not lie in Claim*; *as Felon's Goods &c.* which lies only in Point of Charter. Per Shute, J. who ſaid it had been ſo holden in a Reading upon the Statute of Quo Warranto, ſuppoſed to be Frowick's. 3 Le. 184. pl. 235. Mich. 29 Eliz. B. R. in Sir Gervaſe Clifton's Caſe.

4. Quo Warranto againſt the Lord of a Manor to know *by what Authority* the Defendant *holds a Court Baron*. It was *objected, that it was incident to the Manor, and* is *not any Liberty which the King may have diſtinct from the Manor, and being a Matter of Common Right* the King *cannot have a Quo Warranto thereof*. And of that Opinion was Fleming. Ch. J. Fenner doubted. But Yelverton, Williams and Croke held, That a Quo Warranto well lies; for it is a Matter of Right to hold Courts, and to *adminiſter Juſtice*, and to *hold Plea*, and to *draw Aſſemblies of Men* together, and to *ſwear Officers*; which if any doth without Right, he is to render an Account thereof; and therefore a Quo Warranto lies to ſhew by what Title he holds it. But if he there intitles himſelf to the Manor, he needs not then ſhew that he is to have a Court Baron, for that is incident thereto. And *here the Judgment is not, That the King ſhall ſeize*; becauſe it is not any ſuch Franchiſe as the King may have; *but* it is, *That the Defendant* ſhall *be ouſted of that Liberty*. Cro. J. 259. Mich. 8 Jac. B. R. The King v. Stanton.

5. A Quo Warranto was brought *for claiming a Foreſt and a Court of Swannimote.* The Defendant made his Claim by a Charter granted by H. 2. but did not ſhew it. But Coke, Ch. J. and Doderidge, J. that no Subject can have a Foreſt; A Swannimote-Court, Doderidge ſaid, a Subject may have, but not a Foreſt; becauſe none can make a Juſtice in Eyre but the King. 2 Bulſt. 295. Mich 12 Jac. The King v. Briggs.

6. If *Markets* were kept *without the King's Grant*, a Quo Warranto lay againſt thoſe who continued them; and the People that frequented ſuch Markets were puniſhable by Fine. Arg. 3 Mod. 127.

Serj. Hawkins ſays, It ſeems clear, That this Statute extends to all Informations whatſoever exhibited by the Maſter of the Crown-Office; and that tho' it may be objected, that an Information in the Nature of a Quo Warranto, being a proper Means to try a Right, is not within the Meaning of the Statute, which mentioning *Treſpaſſes, Batteries*, and *other Miſdemeanors* may be reaſonably conſtru'd ſuch other Miſdemeanors only as are of an inferiour Nature, like to thoſe ſpecified, which are generally wrangling and frivolous ones; yet ſeeing this is a *Remedial Law*, and *therefore ought to be largely conſtru'd*, and ſuch Informations may be as vexatious as any other, and always ſuppoſe an Uſurpation of ſome Franchiſe, and every ſuch Uſurpation is certainly a Miſdemeanor. It hath been ſettled, that this Statute doth extend to them. 2 Hawk. Pl. C. 262 cap. 26. S. 7.

7. 4 & 5 *W. & M. cap.* 18. *S.* 3. *The Clerk of the Crown in the Court of King's Bench, ſhall not, without expreſs Order given in open Court, file any Information for any Treſpaſs or Miſdemeanor before he has taken a Recognizance from the Perſon procuring ſuch Information to be enter'd into to the Perſon againſt whom it is exhibited in the Penalty of* 20 *l. that he will effectually proſecute ſuch Information, and abide by and obſerve ſuch Orders as the Court ſhall direct. And if the Perſon againſt whom ſuch Information is exhibited ſhall appear and plead to Iſſue, and the Proſecutor ſhall not at his own Coſts, within a Year, procure it to be try'd; or if a Verdict paſs for the Defendant, or if the Informer procures a Noli Proſequi, the Court is authoriz'd to award the Defendant his Coſts, unleſs the Judge, before whom ſuch Information is try'd, ſhall at the Trial certify upon Record, that there was reaſonable Cauſe for ſuch Information; and if the Informer ſhall not, within three Months after the Coſts tax'd and Demand made, pay to the Defendant the ſaid Coſts, the Defendant ſhall have the Benefit of the ſaid Recognizance.*

8. It was moved for Leave to file an *Information againſt the Mayor and Common Council of* Hertford, in the Name of Sir Samuel Aſhtree, to know by what Warrant they admitted *Foreigners and Strangers to the Freedom of the Town*; alledging, that this was no Quo Warranto in the Name or at the Proſecution of the King, but only a *Method to try a Right*, Whether the Mayor and Common-Council could, contrary to the expreſs Words of the Charter, as it appear'd, admit thoſe to the Freedom of the Town who were Strangers and not Inhabitants therein; and produced 4 or 5 Precedents in the Time of King Charles I. After ſeveral Motions, the Court gave Leave to file an Information, becauſe the *injur'd Freemen of the Town could have no other Way to remedy themſelves*, or to try their Right. In this Caſe, Holt ſaid, that a Quo Warranto *is in the Nature of a Writ of Right*, to which the Defendant can have *no Plea but to juſtify or diſclaim*, and *can't plead Not Guilty*; and that *Judgment* both for and againſt the King is *final. But* Judgment *in an Information in the Nature of a Quo Warranto*, if againſt the Defendant, is final, but not if againſt the King; and that in this Caſe the Right is in the Corporation, and the Execution only in the Mayor and Aldermen. 12 Mod. 225. Mich. 10 W. 3. Anon.—cites 1 Sid. 86.—9 Co. 28. a. — 2 Inſt. 282.

(C. d. 2) Quo Warranto. Of what Thing it lies. *By what Words.*

1. QUO Warranto; *by this Word* (*Toll*) he *claim'd Tallage of his Villeins*; *and by Word* * (*Term*) he *claimed their Progeny, and by* the Word (*Socke*) he *claimed Suit of his Tenants, and by* the Word (*Sake*) he *claim'd Conuſance of Pleas of his Tenants, and by* the Word (*Murder*) *to have Amercements of Murderers, and by* the Word † (*Oredelfe*) *to have Ore found in his Soil.* Br. Quo Warranto. pl. 2. cites It. Not. 19.

* So it is in all the Editions of Brooke, but it ſeems it is miſprinted for (Them) or (Theam) which in Somn. Gloſs. ſignifies Mancipiorum Sobolem, and in Spelm. Gloſs the Word is Them, Team, and Theam accordingly. And ſee Keilw. 145. a. — † Br. Preſcription. pl. 110. cites S. C. Brooke ſays, This ſeems to commence by Grant at firſt, and therefore makes a Quære if a Man may preſcribe in it.

2. *Turn-Toll* is to have Toll for Beaſts driven to be ſold, tho' they are not ſold. Br. Quo Warranto. pl. 3. cites It. Not. Fol. 21 & 32 E. 3.

(C. d. 3) *Proceedings, Pleadings, and Judgment* in a Quo Warranto, in general.

1. THE Defendant in a Quo Warranto was admitted to *Imparle.* Keilw. 138. b. Itin. temps. E. 3.

It was moved for a *ſecond Imparlance* in a Quo Warranto, and it was ſaid that it was granted in the Caſe of the City of London; but the Court deny'd it; for Aſtry ſaid, by the Courſe of the Court, they were to have but the common Imparlance; And (Per Cur.) being ex gratia, we *may grant or deny it* as we ſee Cauſe. Comb. 12. Hill. 1 & 2 Jac. 2. B. R. Anon.

2. A Quo Warranto was *brought* for Vexation *upon* 48 *Points*; and the *Court* being moved in it, *ordered that the Proſecutor ſhould* wave that Quo Warranto, and ſhould bring a new one, and therein *inſiſt only upon three Points*; but that he might proceed to a Trial upon his New Quo Warranto in ſuch Time as he might have done upon the Old (Hill. 22 Car. B. R.) to the End he might not be delay'd in his Proceedings by bringing of the new Quo Warranto. 2 L. P. R. 414. Tit. Quo Warranto.

3. There is a *Difference* between a *Writ* of Quo Warranto and an *Information in Nature of* a Quo Warranto, as to the Proceſs upon them; for it ſeems, that the Proceſs upon Information are *Ven. fac.* and *Diſtringas.* But upon the Writ of Quo Warranto it is *Summons*; and for Default of Appearance, that the Liberties ſhall be ſeiz'd. Sid. 86. in the Caſe of the King v. Trinity-Houſe.—— cites Co. Ent. 527, 528 &c.

4. A *Verdict* between private Perſons may not be read as any *Evidence* againſt the King, in an Information on a Quo Warranto. 2 Show. 48. Paſch. 31 Car. 2. B. R. The King v. Carpenter.

5. A Verdict in a Quo Warranto on the meer Right, *concludes the King*, but on Information it does not. 2 Show. 47. Paſch. 31 Car. 2. B. R. The King v. Carpenter.

(C. d. 4) Proceedings, Pleadings and Judgment in Quo Warranto, *as to Liberties and Franchiſes.*

1. 18 *E.* 1. ENACTS, that *if any can verify by good Inqueſt or otherwiſe, that they, or their Anceſtors or Predeceſſors, have uſed* * *any Liberty whereof they have been impleaded by Quo Warranto before the Death of R.* 1. *and have hitherto* † *(not having abuſed ſuch Liberty) they ſhall be adjourned to a reaſonable Day before the Juſtices, within which Time they may repair to the King with the Record thereof ſigned by the Juſtices Seal, which done, the King will confirm their Eſtate; and if any Judgments have been given upon ſuch Writs by the Juſtices at Weſtminſter, upon the Complaint of the Party grieved to the King, he will give them Remedy.*

* This extends to all Liberties, as well to thoſe that lie in Point of Charter, as Conuſance of Pleas, Felons Goods, and the like, as to thoſe that may be claimed by Preſcription, as Waif and Stray, and the like. 2 Inſt. 496 —— † This Clauſe extends not only to Miſ-uſer, Diſ-uſer, and Non-uſer of Liberties, but to Falſe Claim of them, and the like. 2 Inſt 496.

Scrope ſaid that a Hundred is out of the Caſe of this Statute; for this Statute is intended of Franchiſe, and a Hundred cannot be ſaid a Franchiſe; for Præcipe quod reddat lies of a Hundred. But Shard ſaid a Hundred is no other than a Franchiſe Royal, as View &c. by which he thought that a Hundred, which comprehended ſuch Franchiſe Royal, might properly be claimed as other Franchiſes. Keilw. 143. Temps E. 3.

The Coſts, Charges and Expences of the Subjects in theſe Caſes were exceſſive, and therefore to meet with this Miſchief, and that the Subject might receive Juſtice in his own Country, and as it were at his own Door, it was the King's ſpecial Grace, that Pleas of Quo Warranto ſhould be heard and determined in the Eyres of the Juſtices. 2 Inſt. 497. —— When Juſtices in Eyre ceas'd, then this Branch for the Eaſe of the Subject, and for ſaving their Coſts, Charges and Expences, loſt its Effect; for with Juſtices in Eyre this Branch lived, and with them it died. Jenk. 498.

All Pleas of Quo Warranto ſhall be from henceforth pleaded and determined in the Circuit of the Juſtices; and all Pleas now depending ſhall be adjourned into their proper Counties, until the coming of the Juſtices into thoſe Parts.

This Statute was confirmed by another Statute de Quo Warranto made the ſame Year and to the ſame Effect.

2. In Quo Warranto he claimed Franchiſe &c. and he *made Default at the Day*, by which it was *awarded that the Franchiſe be ſeiſed into the Hands of the King; and that the Sheriff anſwer the Profits*; and after the *Defendant came by Attorney, and prayed to replevy the Franchiſe*, and *had it Salvo Jure Regis*; and *ſaid that he claimed the Franchiſe as appendant Time out of Mind*, and was received. Br. Quo Warranto, pl. 5. cites It. Canc. 6 E. 2. 6.

3. In Quo Warranto the *Defendant claimed Aſſiſe of Bread and Ale* &c. He ſaid that it was *Appendant to the Manor Time out of Mind* &c. and claimed *by Feoffment of the Manor cum pertinentiis*. And it was held that *he may vouch*, becauſe the Franchiſe paſs'd with the Manor; *and* it was admitted alſo that he may *preſcribe*. Br. Quo Warranto, pl. 6. cites It. Canc. 6 E. 2. 7.

4. In Quo Warranto if a Man *claims Court of his Demeſne Tenants in his Manor*, it ſuffices to *ſhew that he has Manor there without more*; and there it was ſaid that he *need not anſwer to it*. Br. Quo Warranto, pl. 4. cites T. 17 E. 2.

Keilw. 147. a. S. C. 5. In Quo Warranto *he claimed to have Franchiſe in his Manor of C.* and *ſaid that his Father was ſeiſed of the Manor in Fee, and died ſeiſed, and he entered as Heir, and prayed his Age*, becauſe he is within Age; and the Parol demurr'd. Bro. Quo Warranto, pl. 3. cites It. Not. fol. 21. and 32 E. 3.

Quo Warranto is in Nature of 6. When *Franchiſe is allowed in Eyre*, the *Award is* no other than *that he go ſine Die ſalvo Jure Regis*; and ſo if it be rightly allowed and well uſed,

uſed, it ſhall be allowed, but if it be not well allowed, we will not allow it. Keilw. 139. b. 140. a. Per Chaunt. Itin. Temps E. 3. the King's Writ of Right for

Franchiſes and Liberties, wherein *Judgment final* ſhall be given either againſt the King for the Point adjudged, or for the King; and the *Salvo Jure* for the King *ſerveth for any other Title* than that which was adjudged; and therefore William de Penbrugge the King's Attorney, for proſecuting a Quo Warranto againſt the Abbot of Fiſchamp for Franchiſes within the Manor of Steynings Sine præcepto, was committed to Gaol. 2 Inſt. 282.

7. A *Man* at the Commencement of the Eyre *claimed to have View and Waif* in his Manor of L. and *in the* Writ of *Quo Warranto Waif was omitted*, by which he prayed that he might plead for it upon his Claim, Et conceſſum fuit ei; quod nota. Keilw. 147. b. Itin. Temps E. 3.

8. In Quo Warranto againſt Sir J. C. for *claiming Wreck* Defendant pleaded *that E. Duke of B. was ſeiſed of the Manor of D. to which he had Wreck appendant, and was de Alta Proditione debito modo attinctus*, and that found before the Eſcheator; and that the Manor *deſcended to Queen M. who granted the ſame to the Earl of W. who granted to the Defendant.* Upon which it was demurr'd, and Exception was taken to the Plea, that the Attainder was not fully and certainly pleaded. But Plowden argued contra, that it was certainly pleaded, viz. Debito modo attinctus; and it is *ſhewn that the Wreck is appendant to the Manor*, and then if he hath the Manor he hath the Wreck alſo; and *if Defendant hath the Manor, it is not material, as to the Queen, How he hath it; for She does not claim the ſame, but impeaches the Defendant for uſing ſuch a Liberty there*; but if the Heir of the ſaid Duke had demanded the Manor there againſt him, the Attainder ought to have been pleaded certainly. 3 Le. 72. pl. 111. Hill. 20 Eliz. B. R. The Queen v. Sir John Conſtable.

9. Information was, *That where the Defendant was ſeiſed of a Manor, and of an Houſe within it, he claimed to have a Court or View of Frankpledge Infra Meſuagium prædict.* and alſo *that Sine aliqua Conceſſione ſive Authoritate uſurpavit Libertates prædictas.* Defendant pleaded, That *Non Uſurpavit Libertates prædict. infra Meſuagium prædict. Modo & Forma.* It was inſiſted that the Plea is not good; for the natural Anſwer to a Quo Warranto is either to Claim or Diſclaim, and Defendant does neither of them. Shute J ſaid a Quo Warranto contains but two Things in it. 1ſt. It demands Quo Warranto he claims ſuch Liberties. 2dly. He charges him with a tortious Uſurpation of them; and here the Defendant hath anſwered to the Uſurpation, but not ſhewn by what Title he claims them. And that the like Caſe was adjudged in this Court, That Non Uſurpavit Modo & Forma was no ſufficient Anſwer. The Caſe was adjourned. Godb. 91. pl. 103. Mich. 28 & 29 Eliz. B. R. Sir Jervis Clifton's Caſe. 3 Le. 184. pl. 235 S. C. — 4 Le. 199. pl. 318. S. C.

10. It was agreed by the whole Court, That in a Quo Warranto it is *not ſufficient* for the Defendant *to ſay that ſuch a Subject hath lawful Intereſt* to hold Leets *without making Title* to himſelf; for the Writ is Quo Warranto he claims them. 2 Le. 28. pl. 31. Trin. 30 Eliz. B. R. The Queen v. Partridge. 2 Le. 212. pl. 266. S. R. — Cro E. 125. S. C. by Name of Patridge's Caſe.

11. Quo Warranto &c. the Defendant *pleaded that the Abbot of B. was ſeiſed* of Waifs and Strays *by Preſcription, and had uſed* and exerciſed *the Liberty to have Catalla Felonum within three Months before the Suppreſſion, without ſhewing by what Title, Grant or Charter; and that by the Statute* 32 *H.* 8. *for reviving the Liberties, and by Patent of Tot, Talia, Tanta*, Conſimilia Libertates &c. as the Abbot had, *he concluded Eo Warranto he uſed and claimed the Liberties aforeſaid, as pertaining to the Manor.* Two Judges were of Opinion, That the Defendant had ſet forth a ſufficient Title by Way of Uſage in the Abbot, *without ſhewing the Grant made to the Abbot*; As a Man may plead a Diſcharge of Tithes of Abbey Lands by the Statute 31 H. 8. that the Abbot held diſcharged at the Time of the Diſſolution, without ſhewing how he was diſcharged; 9 Rep. 24 Mich. 33 & 34 Eliz. The Abbot of Strata Marcella's Caſe.

but Popham Ch. J. e Contra, becauſe Felons Goods could not paſs from the Crown without Matter of Record; now if an Uſage ſhould be pleadable in ſuch Caſe, and Iſſue ſhould be taken upon a Traverſe of Legitime uſus fuit, this muſt be tried by a Jury; and by Conſequence they muſt find what the Law is upon that Record, which is againſt the Maxims of the Law; but the Caſes of Tithes are otherwiſe, becauſe they may be diſcharged by Unity of Poſſeſſion, or by Real Compoſition, which is Matter en Pais, or by the Pope's Bulls, which are not Records in our Law. But they all agreed that he *ought to ſhew the Eſtate of the Abbot*, becauſe the Statute revives no other Eſtate in the Liberties in the Crown, than ſuch as came to the Crown by the Diſſolution of the Abbey. Aud as to the Concluſion of *Eo Warranto*, they all agreed that it was good, becauſe it *was taken diſtributively*, viz. That he us'd ſuch as Appurtenant, which might be Appurtenant, and the others by the other Title. Mo. 297. pl. 443. Paſch. 32 Eliz. The Queen v. Vaughan.

3 Bulſt. 156. S. C. — Roll. R. 399. Trin. 14 Jac. S. C.

12. A Quo Warranto againſt the Biſhop of Durham to know why he claimed to have the *Goods and Chattels of Felons and Perſons ſtanding Mute*. He *pleaded that Durham was a County Palatine, and had Jura Regalia, and by Reaſon thereof he claimed that Privilege*. Per Coke, and the whole Court agreed thereto, That tho' a Man cannot preſcribe to have Felons Goods, becauſe ſuch Preſcription is only for Matters in Fact, yet a Man may preſcribe to have a County Palatine, and by Conſequence to have all theſe as Incidents to it. 2 Bulſt. 226. Paſch. 12 Jac. Sir Jerom Bows v. Biſhop of Durham.

13. Quo Warranto was brought to ſhew why they *claim divers Liberties &c. within the Palace of the Archbiſhop of Canterbury*. The Defendants *as to Part in ſuch a Place juſtify in the City Preterquam in Staple-gate and Weſt-gate, & quoad Reſiduum locorum diſclaim*. It was reſolved that the *Diſclaimer extends* to Staple-gate and Weſt-gate, notwithſtanding the Preterquam; and Judgment of this Part was given immediately for the King. 2 Roll. Rep. 482. Mich. 22 Jac. B. R. The King v. the Citizens of Canterbury.

14. In Quo Warranto for claiming of a *Market*. The Defendant *claimed the ſame by Letters Patents* of E. 3. made to the Abbot of G. but *did not plead Hic in Curia prolat'* as he ought to do. The *Attorney General confeſſed this*; whereupon the Court was moved for Judgment for Defendant. But though the Patent was in Court, Doderidge J. ſaid, it did not appear ſo to the Court Judicially, it not being pleaded with Hic in Curia prolat'. And this *cannot be amended without the Attorney General's Conſent*, and without Amendment Judgment muſt be for the King; And afterwards a Rule was entered by Conſent of the Court, it being moved by Coke Ch. J. viz. That the Opinion of the Court was, That the Plea in Bar here is not good, neither in the Manner nor Matter of it; And this was done, becauſe otherwiſe this Matter hereafter might be Evidence againſt the King. 3 Buls. 58. Trin. 13 Jac. the King v. Capel.

15. A Quo Warranto was brought *for claiming divers Liberties, Privileges &c.* without expreſſing any Certainty of what they conſiſted, as Waiſe, Eſtray, Frank-pledge &c. ſo as Defendant might make a particular Anſwer to them, and therefore the Court held it naught. But Mr. Waterhouſe the Prothonotary ſaid, that there are Precedents accordingly; Whereupon a Day was given to ſearch the Precedents, and Proceſs was ordered in the mean time to ceaſe againſt the Defendant. Noy. 121. Sir Henry Cheverell's Caſe.

16. A Quo Warranto was brought *for uſurping certain Privileges within the Manor of Linton*. Iſſue was joined, whether John Abbot of P. ever uſed Privileges *of Court Leet and Court Baron*; and found that he had not uſed them &c. It was moved in Arreſt of Judgment; 1. Becauſe *they find that the Keeping of the Court Leet and Baron is an Uſurpation, whereas they alſo find that ſuch Courts are uſed as within the Manor (finding the Manor)*

Manor) which is impoſſible; For a Court Baron is a neceſſary Incident to it as it is a Manor and cited 6 E. 3. 11. No Judgment was given. 2 Sid. 68. Paſch. 1658. B. R. Wildmore's Caſe.

17. In a Quo Warranto againſt the Town of Farnham, for *uſing a Fair and Market, and taking Toll* &c. *Iſſue was taken, whether they had Toll by Preſcription* or not, and it was found that they had; but it was moved in Arreſt of Judgment, that here was a *Diſcontinuance, becauſe* there was *No Iſſue as to the other Liberties* claimed by them, *(viz.) a Fair and Market*; and this Action is not helped by the Statute of Jeofails, Quod fuit conceſſum; But the Chief Baron ſaid, that they were too ſoon to urge that, becauſe Judgment was not yet given, and *before Judgment there can be no Diſcontinuance againſt the King*, becauſe the *Attorney General may yet proceed, by the King's Prerogative, to take Iſſue upon the reſt, or* may *enter a Nolle Proſequi*, but if he will not proceed, the Court may make a Rule on him Ad Replicandum, and ſo there may be a ſpecial Entry made of it, wherefore non Allocatur. Hard. 504. Paſch. 21 Car. 2. in the Exchequer. Attorney General v. Town of Farnham.

18. Upon a Quo Warranto when the *Liberties* are *ſeiſed quouſque* &c. and they *do not replevy them*, (per Aſtry) the Courſe is, That *Judgment final* ſhall be given Niſi they plead within ſuch a Day. Comb. 19. Paſch. 2 Jac. B. R. Anon.

19. Wherever any *Judgment* is given *for the King* for a Liberty uſurped, it *is Quod extinguatur, and that the Perſon who uſurped* Libertates &c. *Nullatenus intromittat* &c. which is the Judgment of Ouſter, but the Quo Warranto muſt be brought againſt particular Perſons. *But* where it is *for a Liberty claimed by a Corporation*, there it muſt be brought againſt the Body Politick, in which Caſe *there may be a Seiſure of* the Liberties which will not warrant either the Seiſure or diſſolving of the Corporation itſelf. Per Curiam. 4 Mod. 58. Mich. 3 W. & M. B. R. in Sir Ja. Smith's Caſe.

20. If *ſeveral Privileges* are *granted* in a Charter, and there is a Forfeiture of the Charter for an *Abuſer of one of the Privileges*, and a Quo Warranto is brought, and Judgment upon it, this is a Forfeiture of the whole Charrer. 2 L. P. R. 414. tit. Quo Warranto.

21. It was moved for an Information in Nature of a Quo Waranto *againſt the Steward of a Court Leet, and againſt the Bailiff and Conſtables, for impannelling a Jury not duly ſummoned*, the Bailiff being the proper Officer to ſummon them who ſhould be all Freeholders, for they only have a Right to be Jurymen, but there were none ſummoned, and 6 Perſons who had no Right being preſent in Court were ſworn of the Jury, and 6 Freeholders being likewiſe preſent in Court refuſed to be ſworn becauſe not ſummoned, neither would they ſerve with thoſe who had no Right to be of the Jury, whereupon the Steward ſwore 6 more; *and the Jury thus conſtituted* of 12, not having Right to be Jurymen, *choſe the Bailiff and Conſtables.* The Steward ſhewed for Cauſe, that the 6 Freeholders who appeared in Court were duly ſummoned but refuſed to be ſworn, whereupon he ſwore a Jury out of ſuch as were preſent, which he inſiſted was a good Election, and that this Jury choſe the Bailiff and Conſtables, and that this was *the conſtant Courſe of chuſing ſuch Officers*: And that it would be dangerous to make a Precedent of trying the Right of chuſing ſuch Men by a Quo Warranto. The Court thought there was no Room for any Complaint againſt the Conſtables or Bailiff; but if any, it is againſt the Steward; and ſo a Rule was made for him to attend, and ſhew Cauſe why an Attachment ſhould not go; and the Rule for the reſt was in the mean time enlarged. 8 Mod. 130. Trin. 9 Geo. 1724. The King v. Harriſon.

(C. d. 5) Proceedings, Pleadings, and Judgment in Quo Warranto, *as to Corporations.*

1. IN a Quo Warranto brought *againſt the Bailiffs, Aldermen &c.* they *appeared by Warrant of Attorney*, but *one of the Bailiff's* named in the Warrant *did not appear nor agree to it.* The Appearance by the major or greater Part being recorded was held ſufficient. And alſo, that tho' the Warrant of Attorney was *under another Seal* than their common Seal, yet being under another Seal and recorded it cannot be annulled. Godb. 439. Bailiffs &c. of Yarmouth's Caſe.

It was ſaid in this Caſe, that the Soil of all Navigable Rivers in England belongs to the King, and the Reporter adds a Nota, that if this had been in a Quo Warranto, the Judgment had been final, becauſe

2. Information in Nature of a Quo Warranto againſt the Defendants, *for taking Gravel and Sand in the River Thames for Ballaſt*; they *juſtified by* Virtue of *a former Patent* to them by the King *of the Office of Laſtage and Ballaſtage of all Ships in the River Thames*; and the Opinion of the whole Court was, that the Defendants had a good Title to take Sand there for Ballaſt, without ſaying Cum pertinentiis; But upon a Defect in Pleading, Judgment was given againſt them; 1. That they *pleaded their Patent as a Grant and Confirmation*, which made it *double*, (it being upon Demurrer) and cited D. 115. But the Reporter ſays, Vide the Caſe of the **King v. Bridgett** in Quo Warranto, in 17 Jac. where it was held good. 2dly, They did *not allege that it belonged to the ſaid Office to take Sand and Gravel in that River.* 3dly, They did *not ſay that the Office was* an *ancient* Office. Sid. 86. Trin. 14 Car. B. R. the King v. Trinity-Houſe.

that is a Writ of Right; but it being in an Information in Nature of a Quo Warranto, it is not concluſive, and it appears by Precedents, that there is a Difference in Proceedings. *In the Quo Warranto is a Summons*, and *for Default of Appearance Judgment is that the Liberties be ſeiſed, but in the Information* the Proceſs is a *Venire Facias and Diſtringas.* Sid. 86. Trin. 14 Car. 2. B. R. The King v. Trinity Houſe.

2 Keb 52. 63. 88.

3. In a Quo Warranto *againſt the Muſicians Company in London* the Return was, that they were a Corporation &c; but the Court took *Exceptions to the Return*, 1. Becauſe it appears that the *Name of their Corporation was The Maſter and Wardens, whereas in their Return they made themſelves Guild or Fraternity*; For they muſt be the one or the other. 2dly, They returned, *that they may elect Perſons of the Fraternity into the ſaid Fraternity*, which is *contradictory*; For they ought to elect into the Society ſuch as were not of it before, and not ſuch as were. Sid. 290. pl. 7. Trin. 18 Car. B. R. The King v. Berdwell.

4. The King brought Quo Warranto *againſt A. B. C. and D. & alios Periclitatores & Plantatores pro prima Colonia London in Virginia, to know by what Warrant they claim divers Liberties.* They come and plead inſufficiently, upon which the King demurs. The Queſtion is, How Judgment ſhall be entered? For the *Maſter and chief of the Company were left out* in the Quo Warranto, and the Judgment was given againſt A. B. C. and D. & alios Periclitatores &c. But *Quære if this binds the Corporation?* 2 Roll. Rep. 455. Trin. 22 Jac. B. R. Virginia Company's Caſe.

5. A *Corporation aggregate* may be forfeited and ſeiſed into the King's Hands *upon a Breach of Truſt repoſed in them for the good Government of the King's People.* And in the principal Caſe a Seiſure is plainly implied in the Statute of 28 *E.* 3. *cap* 10. which enacts, That *on the firſt Offence of the City of London, it ſhall forfeit* 1000 *Marks, on the ſecond* 2000, *and for the third, the Liberty and Franchiſe of the City of London ſhall be taken into the King's Hands*, which plainly argues that there may be a Seiſure of the Corporation; and as to a Forfeiture the Act of Oblivion proves it, where 12 Car. 2. cap, 11. S. 5. is, "That all Bodies Corporate, Ci-

" ties,

" ties, Boroughs &c. are pardoned and acquitted of all Forfeitures &c." And ſhould the Law be otherwiſe, it would erect ſo many independent Republicks, as there are Corporations now in England, which would be of miſchievous Conſequence to the King and Kingdom. 2dly, The *affirming a Power to make By-Laws for levying Money* as they have done, is a great Oppreſſion of the People, and conſequently a Breach of that Truſt repoſed in them for the Welfare of the King's Subjects, and conſequently a juſt Cauſe of Forfeiture. 3dly, *A Petition* (mentioned in the Pleadings) *ſcandalous to the King and his Government, and tending to beget in the People an Hatred of their Sovereign* is a juſt Cauſe of Forfeiture. Reſolved. 2 Show. 278, 279. Hill. 34 & 35 Car. 2. B. R. The King v. the Mayor &c. of London.

6. If the *Corporation* in a Quo Warranto *appears not thereto*, Judgment ſhall be enter'd for a *Seiſure Quouſque, and if in the mean time they come not and replevy* their Corporation and appear, then *Judgment final ſhall be given* againſt them in the Term after; And it ſhall not be a good Appearance, unleſs the *Warrant of Attorney* be *made under the Corporation Seal.* 2 Show. 365. pl. 356. Trin. 36 Car. 2. B. R. The King v. Cheſter City.

7. 9 *Ann. cap.* 20. *S.* 1. *Where any Writ of Mandamus ſhall iſſue out of the Queen's Bench, the Courts of Seſſions of Counties Palatine, or the grand Seſſions in Wales, to admit and reſtore Burgeſſes or Officers of Corporations, ſuch Perſons, who by Law are required to make Return, ſhall make their Return to the firſt Writ of Mandamus,*

S. 2. *As often as in any of the Caſes aforeſaid any Mandamus ſhall iſſue, and a Return ſhall be made, it ſhall be lawful for the Perſons, ſuing ſuch Mandamus, to plead to or traverſe all or any material Facts contained in the Return, to which the Perſons making Return ſhall reply, take Iſſue, or demur, and ſuch Proceedings ſhall be had therein, as might have been had if the Perſons ſuing ſuch Writ had brought their Action on the Caſe for a falſe Return, and if Iſſue ſhall be joined on ſuch Proceedings, the Perſons ſuing ſuch Writ, may try the ſame in ſuch Place as an Iſſue joined in ſuch Action on the Caſe might have been tried; and in Caſe a Verdict be found for the Perſons ſuing ſuch Writ, or Judgment given for them, they ſhall recover their Damages and Coſts as they might have done in ſuch Action on the Caſe to be levied by Capias ad Satisfaciendum, Fieri Facias, or Elegit; and a peremptory Writ of Mandamus ſhall be granted without Delay, as if ſuch Return had been adjudged inſufficient; and in Caſe Judgment ſhall be given for the Perſons making ſuch Return, they ſhall recover Coſts.*

S. 3. *If Damages be recovered by Virtue of this Act againſt any ſuch Perſons making ſuch Return to ſuch Writ, they ſhall not be liable to be ſued in any other Action for making ſuch Return.*

S. 4. *In Caſe any Perſons ſhall uſurp, intrude into, or unlawfully hold any of the ſaid Offices or Franchiſes, it ſhall be lawful for the proper Officer in each of the ſaid Courts, with the Leave of the Courts, to exhibit Informations in the Nature of Quo Warranto, at the Relation of any Perſons deſiring to proſecute the ſame, and who ſhall be mentioned in ſuch Informations to be the Relators againſt ſuch Perſons ſo uſurping, intruding into, or unlawfully holding the ſaid Offices or Franchiſes; and if it ſhall appear to the Courts, that the ſeveral Rights of divers Perſons to the ſaid Offices or Franchiſes may properly be determined on one Information, it ſhall be lawful for the ſaid Courts to give Leave to exhibit one ſuch Information againſt ſeveral Perſons, in order to try their reſpective Rights; and ſuch Perſons ſhall appear and plead as of the ſaid Term and Seſſions in which the Informations ſhall be filed, unleſs the Court ſhall give further Time, and ſuch Perſons who ſhall proſecute ſuch Informations ſhall proceed thereupon with the moſt convenient Speed.*

Informations in Nature of a Quo Warranto may be brought *with Leave of the Court* at the Relation of *any Perſon* deſiring to proſecute, and this is by Virtue of the Statute of 9 *Annæ* 20 the End of which Statute was the King v. Butler.

to prevent Frivolous and Vexatious Controverſies. Per Cur. 8 Mod. 351. Paſch. 11 Geo.

S. 5. In Case any Persons, against whom any Informations in Nature of a Quo Warranto shall in any of the said Cases be exhibited, shall be found guilty of an Usurpation, or Intrusion, or unlawfully holding any of the said Offices or Franchises, it shall be lawful for the said Courts to give Judgment that the Relators shall recover their Costs; and if Judgment be given for the Defendants, they shall recover their Costs against such Relators.

S. 6. It shall be lawful for the said Courts to allow to such Persons, to whom any Writ of Mandamus shall be directed, or against whom any Information in Nature of a Quo Warranto, in any of the Cases aforesaid, shall be prosecuted, or to the Persons, who shall prosecute the same, such convenient Time to make a Return, Plead, Reply, Rejoin or Demur, as to the said Courts shall seem just.

S. 7. The Act 4 Ann. cap. 16. for Amendment of the Law and all the Statutes of Jeofails, shall be extended to Writs of Mandamus and Informations in Nature of a Quo Warranto.

S. 8. The Mayor, Bailiff, or other Officer, to whom it belongs to preside at the Election, and make Return of any Member to serve in Parliament, and who ought to be annually elected, and who has been in such annual Office for one Year, shall not be capable to be chosen into the said Office for the Year immediately ensuing; and where any such annual Officer is to continue for a Year, and until some other Person be chosen and sworn into such Office, if any such Officer shall voluntarily and unlawfully prevent the chusing another Person to succeed into such Office at the time appointed, he shall forfeit 100 l. to be recovered with Costs of Suit by such Person as will sue for the same in her Majesty's Courts of Record, one Moiety thereof to be to her Majesty, and the other Moiety to him that will sue for the same.

8. Information in Nature of a Quo Warranto against S. *for usurping the Office of a common Burgess of the Town of the Devises in Wiltshire*; and upon a Trial at Bar upon this Issue, *Whether Sutton was chosen a Capital Burgess by Mayor, Recorder and Capital Burgesses?* the following Points arose; the *Recorder had made a Deputy Recorder by Writing under his Hand and Seal, and afterwards had revoked this Deputation by another Writing, a Copy of which was offer'd in Evidence of the Revocation.* But this held not good Evidence, because it did not appear but they might have produced the Original. Deputation of an Officer is in its own Nature grantable by Parol; and therefore tho' it should happen to be granted by Writing, yet since it is in itself grantable by Parol, it may be revok'd by Parol. *By the Charter* that incorporates the Town, *the Mayor, Recorder, and in his Absence Deputy-Recorder and Capital Burgesses, vel major pars* eorundem, *are impowered to chuse* Capital Burgesses: Now the Question was, *Whether* upon these Words of the Charter, *Acts done by the Mayor and Majority of the Burgesses, without the* Presence of the *Recorder or his Deputy, were good?* And the Court seemed to incline that they were good, because the Word (Eorundem) refers not only to the Capital Burgesses, but Mayor, Recorder and Capital Burgesses; and yet the Reason why the *Presence of the Mayor is necessary to Corporate Acts*, is not because he is particularly named, but *because he is the Head of the Corporation*; and if this were not so, the Addition of these Words in Charters (Quorum Recorder unus,) would be useless and unnecessary. 10 Mod. 74. 75. Hill. 10 Ann. B. R. The Queen v. Sutton.

9. Another *Question* was, *Whether supposing it not necessary by the Charter, that the Recorder should be present, yet the Issue did not oblige them to prove him present* at the Election? To this it was said by the Council, that Concesso the Charter did not require the Presence of the Recorder, the Question was no more than this, Whether they should be obliged to prove *an immaterial Part of the Issue?* It was said further, that by a Parity of Reason it might be expected that they should prove the Presence of every one of the Common Burgesses; That *by the Issue* no more *was meant*, than *that the Election was made by those who had a Power to do it*;

That

That Ubi major pars, ibi tota, viz. the Authority of the whole. And of this Opinion was the Court. 10 Mod. 75. The Queen v. Sutton.

10. Another Queſtion ſtarted was, *Whether in a Corporation* that was by Charter *to conſiſt of Mayor, Recorder, Common Burgeſſes* &c. *the ſame Perſon might not be both Mayor and Deputy Recorder.* 10 Mod. 75. The Queen v. Sutton.

11. Another Point was moved upon the Words of the *Charter*, which *appoints the Swearing of a Common Burgeſs* to be done *before the Mayor, Recorder, Common Burgeſſes, or the Majority* of them *Tunc ibi preſentium*; whether or no a Majority of the whole Body was by theſe Words neceſſary to be preſent at the Swearing, or *whether a Majority of thoſe* that were *preſent was only requiſite, tho'* they ſhould *not* be *the Majority of the whole*? It was ſaid, that upon the Reaſon of the Thing it was not neceſſary that the Swearing in ſhould be done with the ſame Solemnity as the Chuſing in; for the Choice is a voluntary deliberate Act; the Swearing in on the contrary is what a Perſon once choſen may challenge as his Right, and may by Mandamus compel them to do. And if this Conſtruction did not prevail, the Words in this Clauſe of the Charter concerning the Swearing, Tunc ibi præſentium, which are not in the Clauſe concerning the Election, would ſignify nothing. As for the Objection, That it ſeems abſurd to ſay a Man muſt be ſworn before a Majority of thoſe that are preſent, ſince if they are preſent he muſt unavoidably be ſworn before them all. The Anſwer is, That this Clauſe *is to be underſtood of being ſworn in by the Conſent of a Majority of thoſe that were preſent.* 10 Mod. 75. 76. The Queen v. Sutton.

12. Another Queſtion was, *Whether by a Charter that requires Acts to be done by a Majority* of the Corporation, *a Perſon might not be removed by a Majority of that Body, excluding the Perſons that are to be removed*, and cannot vote in their own Cauſe? But the whole Court were of Opinion, that a Removal being an Act of an odious Nature, all Clauſes concerning it muſt receive a ſtrict Interpretation; and that therefore the Word *Majority ſhould be underſtood* of a Majority *of the whole Corporation.* 10 Mod. 76. The Queen v. Sutton.

13. Another Queſtion raiſed was, *Whether not ſummoning* to a Meeting, *Members de Facto diſfranchis'd, tho'* afterwards upon Re-examination it ſhould appear they were *ſtill lawful Members, ſhould vacate Acts done* in thoſe Meetings? Court inclined to think it would not vacate them. 10 Mod. 76. 77. The Queen v. Sutton.

14. Some of the above Points were directed to be found ſpecially. Ibid.

15. An Information in Nature of a Quo Warranto was brought againſt W. for *exerciſing the Office of Mayor in Portſmouth.* W. pleaded the Charter of King Cha. 1. incorporating the Town of Portſmouth &c. and *ſets forth a particular Clauſe on the Charter, declaring, That if the Mayor ſhould die, or* for juſt Reaſons *be removed, it ſhould be lawful* for the Aldermen *to chuſe another Mayor for the remaining Part of the Year*, until the Time to elect came about again; then he ſets forth, that the Mayor died, and *that he was choſen by the Majority of Aldermen, Secundum formam Chartæ prædict.* The Attorney General *replied, Non electus Modo & Forma &c.* Upon Trial at the Aſſiſes it was inſiſted, That the Defendants to prove the Iſſue *muſt firſt prove themſelves qualified by receiving the Sacrament* according to the Act of King Cha. 2. which Point, inſtead of being found ſpecially, was ſaved by the Judge who tried the Cauſe. It was afterwards argued for the Defendant, but no Judgment is mentioned. 10 Mod. 64. Mich. 10 Ann. B. R. Whitehorn the Mayor of Portſmouth's Caſe. Ibid. S. P. againſt others, for *exerciſing the Office of Aldermen.*

16. An Information in Nature of a Quo Warranto was *for exerciſing the Office of Port-reeve in the Borough of Honiton.* The Defendant in his Bar *ſet forth a Right* to that Office, and concluded with a Traverſe *abſque hoc, that the Defendant uſurped the Office.* The Crown in its *Replication, taking* Ibid. 296. Paſch. 1 Geo. 1. S. C. argued for the Defen-

dant, and insisted (among other Things) That the Defendant *by setting forth his Title, had answered the whole Charge of the Information*, which was for him to shew Quo Warranto &c. And the Court were all of Opinion, that Defendant should have Judgment. And Parker Ch. J. said, No Body ever thought Non Usurpavit a good Plea, because it evidently appears from the Nature of the Charge, which is to shew by what Warrant or Authority, to which that Plea is no Answer. And if this could not have been pleaded in Bar, then that Replication, which in Effect sets up that Plea again, must be naught. And to this Powis and Pratt J. agreed. —— An Objection having been made, That *in an Information of Intrusion the King may take Issue upon the Usurpation, tho' the Title be set forth*, It was answered, That an Information of Intrusion *is of a different Nature from that of a Quo Warranto*, because it does not follow from his having a Title, that he is no Intruder; but it does that he is no Usurper. And the *Course of Precedents* is so in Intrusion, but otherwise in this Kind of Information, which is a presumptive Argument that there is a Difference. And there is *another Difference*, That *in an Information of Intrusion the Crown sets forth its Title, and concludes De Præmissis* &c. Arg. 10 Mod. 297. & Ibid 299 Parker Ch. J. approved the Distinction; for tho' the Defendant should have a Title, yet it is very possible he may be an Intruder, but impossible that he should be an Usurper.

taking no Notice of the special Issue set forth by the Defendant, *joined Issue upon the Traverse Quod usurpavit &c.* and upon this *Demurrer is joined.* Powis jun. J. said, He ever took it, that in this Case the Absque hoc &c. was but a meer Matter of Form, and a respectful Way of concluding the Plea. And Parker Ch. J. said, The Question turns upon this, Whether the Traverse be only Matter of Form? for if so, the Crown cannot take Issue upon it; but if it be a material Plea, most certainly the Crown may do it. 10 Mod. 210. Hill. 12 Ann. B.R. The Queen v. Blagden.

17. Upon a Rule to shew Cause why an Information in Nature of a Quo Warranto should not be granted *to shew by what Authority he claim'd to be Mayor of Lestwithiel in the County of Cornwall*, it was shewn, That by the Charter of Incorporation a Mayor is always to be elected out of the Capital Burgesses, and *to continue in his Office till a new Mayor be duly chosen*; That the Defendant the present Mayor never was a Capital Burgess, and consequently never could be duly chosen Mayor out of those Burgesses; and therefore is no Mayor. To this it was answered, That he was chosen a Capital Burgess in 1697. and that as many of the Inhabitants as are now living saw that he was duly elected, except one John John, who now complains against him; and that having now so *long acquiesced under that Election, it shall not now be brought in Question*, it being a standing Rule in Cases of this Nature, that they shall not be examined in such remote Degrees. That Defendant was chosen Mayor in 1706. and that the Corporation, for some Differences among themselves, did not proceed to any Election of Capital Burgesses since that Time; so that the *Borough wanted a sufficient Number of such Burgesses to chuse a new Mayor, and for that Reason the Defendant had continued Mayor ever since.* The Chief Justice was of Opinion, that the Fact was plain that Defendant had been Mayor for 16 Years together, which is a sufficient Cause for an Information; so that the Rule was made absolute, and the Parties were left to try their Right upon this Information, tho' one of the Judges was of Opinion, That a Mandamus to elect a Capital Burgess and a Mayor had been a good and proper Method. 8 Mod. 132. Trin. 9 Geo. 1724. The King v. Alexander John.

The like Rule was made on P. to shew by what Authority he claimed to be *Recorder* of the same Borough; But as to his Case, he was elected 29 April 1722; but finding that Elec-

18. On a Rule to shew Cause why an Information in Nature of a Quo Warranto should not go for *claiming to be Capital Burgesses of Brecknock*, it was objected that they *never were duly chosen Burgesses*; and tho' *one had been Burgess de Facto 12 Years, and the other 16 Years*; and tho' it was urged that it would be of fatal Consequence to this Borough, after so long an Acquiescence, to make all the Corporate Acts done by them during all that Time void, yet it was answered that the long Acquiescence could be no Colour against this Rule, which is made on the meer Right, and that Length of Time will never establish a Right gained by Usurpation; that 'tis true, in Cases of *not taking the Sacrament, or the Oaths of Allegiance and Supremacy*, the Court after a long Acquiescence will intend that they were duly taken; but a Right shall never be intended when the Merits of it are controverted (as in the principal Case)

and

and no collateral Point diſputed. And the Court being of that Opinion, the Rule was made abſolute. 8 Mod. 165. Trin. 9 Geo. 1724. The King v. Powell & al.

tion not to be good, he *was re-elected* the May following;

and *before he was ſworn into the Office*; the Court diſcharged the Rule made to the like Purpoſe as to the Recorder, becauſe he did *not rely upon his firſt but upon his ſecond Election.* Ibid. Price's Caſe.

19. *Stat.* 9 *Ann.* 20. is not excluſive of a Quo Warranto in all Caſes not recited in the Preamble of the Act; and in the principal Caſe, which was for exerciſing the *Office of Bailiff of the Town of D.* which was averr'd to be an Office for the Adminiſtration of Juſtice, and therefore of a Publick Nature, Judgment was given pro Rege. Gibb. 82. Trin. 2 & 3 Geo. 2. The King v. Boyle.

20. If the Party on whom a Rule is made for an Information in Nature of a Quo Warranto, can *ſhew to the Court, that his Right to the Franchiſe in Queſtion has already been determined on a Mandamus*; *or* that it hath *been acquieſced in many Years without any Diſpute*; *or* that it *depends on the Right of thoſe who voted for him, which hath not yet been tried*; *or* that the Franchiſe *no ways concerns the Publick*, (as all thoſe which relate to the Government of a Corporation, or the Election of Members of Parliament, and Fairs and Markets &c. are wont to do) but is wholly of a private Nature, *as a Cony-warren &c. or that the Election by which he claims is agreeable to Charter*; *or that he has never acted under it*, the Court will not grant the Information unleſs there are ſome particular and extraordinary Circumſtances in the Caſe, the Determination whereof being left wholly to the Diſcretion of the Court cannot well come under any ſtated certain Rules. 2 Hawk. Pl. C. 262. 263. cap. 26. S. 9.

(D. d) *Fifteenths* [and Tenths.] *What.*

1. **Fifteenths and Tenths** are a certain Tax anciently by Parliament impoſita ſingulis Civitatibus, Burgis & Oppidis, **but** not upon every particular Man, but generally according to the Rate of the 15th Part of the Goods and Poſſeſſions, as it ſeems, of the Place **Camden Liber Annalium** 80. A **Fifteenth** was granted to E. 1. **as appears by** 7 E. 1. **Rot. Clauſo Memb.** 5. 8 E. 1. **Memb.** 3. 5. 6. 3 E. 1. **Rot. Pat. Memb.** 6.

Spelman's Gloſs. Verbo Quintadecima ſays, That it was Tributum ſingulis Civitatibus, oppidis, Villis totius Angliæ ab antiquo Impoſitum; certum autem & definitum, quod tamen nec annuatim, nec ſine Parliamentario decreto exigatur. Alias Tallagium & Taxa. Gal. Quinſieme, Angl. The Tax. Originem ſumpſit e Saxonum Danegeldo, quod vide, & Hidagium: nam cum ex hidarum plerunque colligerentur deſcriptione Hidagium, utique & pari ratione Carucagium dicitur ab Authoribus. Vide (Inquam) has voces. Literæ Ed. 1. Willielmo Spileman & W. Gilberti. ——Venire faciatis coram Vobis tot & tales, tam Milites, quam alios probos & legales Homines de Com. prædicto, tam infra Libertates quam extra, pro Quintadecima. Dat. 24 Oct. Reg. 3. Clauſ. Rot ejuſdem anni.

2. A Thirtieth and Twentieth was granted to E. 1. **Rot. Pat.** 34. **E. 1. Memb.** 12.

3. By the Expoſition of thoſe of the Exchequer, *Tax and Tallage is no other but Tenth, Fifteenth, or other Subſidy granted by Parliament*, and the *Fifteenth is of the Laymen, and the Tenth is of the Clergy*, and is *to be levied of their Land*; *and the Tenth and the Fifteenth of the Lay Gents is of the Goods*, viz. *the Tenth Part of the Goods in a City and Borough, and the Fifteenth Part of the Goods of the Laymen in the Country, which was levied in ancient Times upon their Goods*; that is to ſay, of the Beaſts upon their Lands, which was very troubleſome; *but now* it is levied *according to the Rate of their Lands by the Yards of Land*, and other Quantities; ſo that now all know their Certainty in every Vill, and pay throughout

the Realm; but it is yet levied in ſome Places upon their Goods, but in ſeveral Places upon their Lands; which was agreed by the Barons. Br. Quinzime. pl. 9. cites M. 34 H. 8.

Fol. 206.

(E. d) *How* it may *commence.*

See (D. d) in the Notes of pl. 1.

1. THE Fifteenth is not any Inheritance in the King, for he cannot have it without the Grant of his People. 11 H. 4. 35. b.

(F. d) How the *Taxation* ſhall be.

There is no Number to this Plea in Roll. Br. Impriſonment. pl. 12. cites S. C.

[1.] VIDE the Form of the Taxation. 1 E. 2. Rot. Pat. Memb. 7.

2. The Prior of E. in London brought *Attachment upon a Prohibition againſt the Collectors* of the Tenth and Fifteenth in London, and *counted that he had delivered the Prohibition in the Preſence of certain People, that they ſhould not diſtrain for Rent of certain Tenements held of him in London*; and notwithſtanding they had taken certain Sums of the Rents of certain Tenements of the Prior for the Tenths wrongfully &c. The *Collectors ſaid, that their Commiſſion was to collect the Tenths, among other Goods and Chattles, of Goods ariſing of Lands, and Tenements purchas'd of Religious*, as appears Anno 21 E. 1. and becauſe the Lands and Tenements was purchaſed in forma prædicta, and becauſe the Wards where &c. were not ſufficient in Goods, they took the Rents of the Tenements of the Prior after the Day of Payment thereof; and the Prior alledg'd, that they had levied the Fifteenth * of the Goods of the Tenants inhabiting in the ſaid Tenements, ſo ought he to be diſcharged from paying for the Rent. And, Per Curiam, becauſe the ‡ Tenants *paid for their Goods in the Tenements, the Prior ought to be diſcharged from any Payment for the Rent of the ſame Tenements*; by which it was awarded, that the *Prior recover Damages tax'd to* 10 *l. and* that the *Collector capiatur*. Br. Quinzime. pl. 2. cites 7 H. 4. 33.

* All the Editions are (del biens et Tenements Inhabitants in les &c.)

‡ Orig. is (Tenements)

But Per Hill; *the Laymen* ſhall be charged *for their Goods* to the Fifteenth, *and the Lay Tenants for their Land.* Ibid.

3. Where *Granges* &c. *are charg'd to the Fifteenth, and after are made Vills and are inherited with Laymen*, yet they *ſhall not be aſſeſs'd to the Fifteenth for their Goods; for the Lord is charged to the Tenth.* Per Thirn. Br. Quinzime. pl. 3. cites 11 H. 4. 35.

4. If Fifteenth, Tenth, Tax, Tallage, or Subſidy be granted, and the *Vill of D. is tax'd to* 10 *l.* and *J. S. of D. is privileg'd therefrom by Grant of the King*, there *his Sum ſhall be recoup'd*, and the Vill ſhall be charg'd of the reſt. Per tot. Cur. Arguendo, quod nota. Br. Quinzime, pl. 5. cites 19 H. 6. 63.

4 Le. 111. pl. 227. S. C.

5. It was held, that *Fifteenths* are *to be levied of Goods and Chattles properly*, and one Townſhip ſometimes is richer than another, and therefore it is not Reaſon that they pay their Fifteenth always according to the ſame Proportion. *But by* Clerk Baron, where the *Cuſtom* has been, that the Fifteenth ſhould be *tax'd according to the Quantity of Acres*, there the Rate and Purport ſhall be always one, whoſoever holds the Land. 4 Le. 185. Trin. 32 El. in the Exchequer, Bartaſe and Hind's Caſe.

6. *Since* the Time of *Magna Charta, the Manner* of the Fifteenth *is alter'd*; for *now* the Fifteenth, which is alſo called the Task, *is not originally*

ginally ſet upon the Polls as at that Time it was, *but* now the Fifteenth *is certainly rated upon every Town.* And this was *by* Virtue of *the King's Commiſſion* into every County of England *in* 8 *E.* 3. Taxations were made of all the Cities, Boroughs and Towns in England, and recorded in the Exchequer; and that Rate was at that Time the Fifteenth Part of the Value of every Town, and therefore retaineth the Name of Fifteenth ſtill. 2 Inſt. 77.

(G. d) *Who* ſhall *pay it.*

There is no Number to this Plea in Roll.

[1.] VIDE the Form of aſſeſſing it. 34 E. 1. Rot. Pat. Memb. 12. 1 E. 3. 2. Rot. Pat. part 1. Memb. 7.

S. P. Br. Exemption. pl. 13.

2. Note that *Cities and Boroughs ſhall pay to the Tenths, and Uplands to the Fifteenths.* Br. Quinzime, pl. 8. cites 11 H. 4. 2. and ſays, this was likewiſe agreed in the Exchequer, Anno 34 H. 8.

S. P. Br. Exemption. pl. 13.

3. *And* ſee in the Regiſter 181, that *none ſhall pay to the Tenth but Boroughs, and Tenants in ancient Demeſne* and *others ſhall pay to the Fifteenth, and none ſhall be double charged*, nor compell'd to pay to the one and the other. Ibid. and cites F. N. B.

2 Le. 146. pl. 179. Mich. 32 Eliz. S C. by Name of Stedd's Caſe.

4. A. was aſſeſs'd to a Fifteenth, but upon Refuſal to pay the ſame, the Collector diſtrain'd his Beaſts and ſold them. A. brought Treſpaſs. The Collector exhibited a Bill againſt A. who ſhew'd, that the *Statute* 29 *Eliz. which enacted this Fifteenth, Provides, That it ſhould be levied of the Moveable Goods, Chattles, and other Things uſual* to ſuch Fifteenths and Tenths, to be contributory and chargeable. And ſhew'd further, *That his Beaſts diſtrain'd were tempore Diſtrictionis upon the Glebe-Land of a Parſonage-Preſentative, which he had in Leaſe; which Glebe-Land is not chargeable uſually to Fifteenths granted by the Temporalty, nor the Cattle upon it.* It was the Opinion of the Juſtices, That tho' the Parſon himſelf ſhall pay Tenths to the King, yet the *Lay-Farmer* ſhall pay Fifteenths, and *his Cattle are diſtrainable upon the Glebe-Lands of the Parſonage.* And ſo the Diſtreſs and Sale were awarded lawful. 3 Le. 259. pl. 344. Mich. 32 Eliz. B. R. Sledd's Caſe.

(H. d) *In reſpect of other Charge.*

1. AN Abbot or other Religious Man ſhall not be charg'd to the Fifteenth for thoſe Goods of which he pays a Tenth among the Spiritual. (Vide this) 1 E. 2. Rot. Pat. Memb. 7. 3 E. 2. Rot. Pat. Memb. 27.

Br. Quinzime. pl. 3. cites S. C.

2. If an Abbot be charged for Tenths for his own he ſhall not be charged for the ſame for a Fifteenth. 11 H. 4. 35. Adjudged.

Br. Quinzime. pl. 3. cites S. C. Per Thirn, And the King may be ſerved of his Sum of the Goods of other Lay-Tenants.— It ſhall be diſcharged of the Tenths. Per Thirn. And therefore it ſeems that it ſhall pay the Tenth again. Br. Extinguiſhments. pl. 12. cites 11 H. 4. 34, 35.

3. If Land be diſcharged of Fifteenths in the Lands of the Abbot in reſpect of Tenths paid by him, if the Land after comes into the Hands of Tenants, and after comes back to the Abbot, yet it is not chargeable. 11 H. 4. 35 b. 37.

4. If

4. If Land has been charged of Fifteenths in the Hands of the Abbot, and there are no Inhabitants upon the Land; if after there are Inhabitants and a Vill, yet the Inhabitants shall pay Fifteenths, tho' their Lord pays Tenths for the same Land. 11 H. 4. 36. b.

See (N. d.) pl. 5.

(I. d) Fifteenths. *Tenths.*

1. He who is assessed in one Vill by his Beasts or Goods to the Fifteenths, cannot be assessed also in another Vill. 11 H. 4. 35. b. 21 E. 3. 42. b.

2. A Man cannot be assessed to the Fifteenth for certain Beasts, if he has not any Beasts at the Time. 11 H. 4. 36. b.

Br. Quinzime pl. 4. cites S. C. per Hank.

3. If I have Terretenants in a Vill, and they pay for their Goods to the Fifteenth, I, who have nothing in the Vill but the Rent of my Tenants, shall not pay to the Fifteenth. 11 H. 4. 45. b.

Br. Quinzime. pl. 4. cites S. C. per Skrene.

4. If I lease Land for Years or Life, rendring Rent; the Lessee shall pay to the Fifteenth for his Goods, and I shall pay nothing for the Rent. 11 H. 4. 45. b.

Br. Quinzime pl. 2. cites S. C.

5. So if my Tenants pay Fifteenths for their Chattels, I shall not pay Tenths for the Rent of the same Land. 7 H. 4. 33. b. Adjudged.

6. If a Manor be annexed to the Spiritualty of a Priory, and the Prior is taxed after among the Clerks for this, yet the Tenants in Fee of the Manor shall be taxed to the Fifteenth among the Temporal Men. 29 E. 3. 28. b.

* Fol. 207.

7. And so the Prior himself, if any of those Tenements in Fee come to * him by Escheat, shall be taxed to the Fifteenth for them. 29 E. 3. 28. b.

8. But if any Tenements which were in the Hands of the Tenants by Bondage, or of Tenants for Life or Years at the Time of the Annexation of the Manor to the Priory, shall after come to the Prior in Possession, he shall not be taxed to the Fifteenth for them. 29 E. 3. 28. b.

9. 9 *H.* 4. 7. Enacts that *Goods shall be chargeable towards the Payment of Tenths or Fifteenths in the Place where they were at the Time the same were granted; howbeit, none shall be twice charged for his Goods.*

10. The ancient Way was *by Tenths and Fifteenths*, then by *Subsidies*, and after by *Royal Aids*, and at last by a *Pound Rate*; the former were all on the Person or Personal Estate, and were much the same Thing; the latter was upon Rents and Lands. In 8 *E.* 3. *a Valuation was made on all the Towns* in England, *and returned into the Exchequer*, which became the *Standing Measure* for taxing. The first Subsidy was in and by 32 *H.* 8. 50. which was a Tax on the Person for his Lands and Goods, payable by the Party where he lived; and this continu'd till 15 *Car.* 1. The Assessment of Tax according to a Pound Rate came in in 17 *Car.* 1. and there was a Clause impowering the Tenant to deduct, and so it was in 1642, 44, 49. and thence it came to be provided in Conveyances, that there should be no Deduction of Taxes. 2 Salk. 615. Hill. 9 W. 3. B. R. Brewster v. Kidgell.

(K. d) *For what Goods* they ſhall be taxed.

[1.] **Of this Taxation of Goods of the Comminalty of all the Counties ſhall be forepriz'd** Armour, * Horſe Furniture, and Robes to Knights, and to Gentlemen and their Femes, and their Veſſels of Gold, of Silver, and of Braſs; **and** in Cities and Boroughs are to be excepted one Robe for the Man and another for the Feme, and one Bed **for both**, one Ring and one Buckle or Claſp of Gold or Silver, or one Girdle † of Silk which ſhe always uſed, and **alſo** one Cup of Silver or of ¶ Nazre, **out of which they drink. And of** Goods of ‡ Houſes there, where they are governed by Sovereign, they are not to be taxed nor priſed; and if they be Houſe governed by a || Meſne Lord, their Goods ſhall be taxed as well as others are. **And** of Goods of People out of Cities, Burghs, and Demeſnes of the King, which Goods are found by Taxation not to exceed the Value of ten **Soudes, nothing is to be demanded or levied; nor of Goods of People of Cities, Burghs, or Demeſnes of the King, which do not paſs the Value of 15 Soudes, is any Thing to be demanded or levied.

There is no Number to this Plea in Roll.

* Orig. is (Monture, jueux.)

† Orig. is (de Sey.)

¶ Nacre de Perles, ſignifies (Mother of Pearle.)

‡ Orig. is (Meſels.)

|| Orig. is (Meſtre.)

** Soudes or Soudis is ſmall Money current at Ormus, in the Perſian Gulph, and is of the Value of about 10 French Sols. Richelet's Dict. — A Sol is about an Engliſh Penny. See Boyer's Dict.

(L. d) *At what Place* it may be taxed.

1. **If a Man** has Land in a Vill, ſow'd with Corn, and has uſed Time out of Mind to carry the Corn to another Vill, and ſpend it there, **if the Corn was growing there at the Time of the Grant of the Fifteenth, and at the Time of the aſſeſſing of the Poles, and he tax'd for this Corn there, tho' he carries it into the other Vill after, according to the Preſcription, and [it is] there tax'd, yet they ſhall be charged where the firſt Tax was.** 21 E. 3. 42. b.

2. But **otherwiſe it had been, if** he had brought the Corn after the Grant, and before the Taxing **of the Poles according to the Preſcription, and there had been tax'd for them.** 21 E. 3. 42. b. **by Iſſue.**

The Caſe was, that *Fifteenth was granted* to the King, at which Time *J N. who inhabited in W. had Corn growing in H. and before the Fifteenth was aſſeſſed, he cut and carried his Corn to W. as he and his Anceſtors had uſed to do Time out of Mind*, and was *aſſeſſed for that Corn and his other Corn in W.* and yet was aſſeſſed *for the ſame Corn in H.* and the Collector diſtrain'd him, and he ſued Replevin, and the other avowed for the Fifteenth &c. and the *Iſſue was taken, If he had Corn in H. at the Time of the Aſſeſſment or not.* Br. Quinzime. pl. 6. cites S C.

(M. d) *How* it may be *levied.*

1. **A Collector of a Fifteenth** may levy all the Tax of a Townſhip upon the Goods of one Inhabitant only **if he will, and the ſaid Inhabitant ſhall have Aid of the Exchequer to make every other Inhabitant to be contributory. Tr. 8 Jac. Scacc. Per Curiam.**

Manwood, Ch. B gave it for a general Rule for all Counſellors at Law, That they did *not* adviſe any Collectors of Subſidies or Fifteenths, *to bring Bills in the Exchequer* Chamber *for the Non-payment* of Subſidies &c. for ſuch Bills ſhould not be allow'd hereafter, *becauſe they had Remedy by Diſtreſs.* It was alſo holden, that if any be aſſeſs'd for the Fifteenth which he ought to pay, or if two

Towns are to pay together, and the *one Town is taxed more than it ought* to be, or had been accuſtomed, thoſe which are grieved by ſuch Seſſment *may have a Commiſſion* out of the Exchequer, which is called *Ad æqualiter taxand.* and that was put in Ure in a Caſe between **Bartaſe** and **Lind**, where one of them was Lord of the Town of Little Marloe, and the other of Hedford. And as to this Commiſſion, *Ad æqualiter taxand.* Manwood and Fanſhaw ſaid, that they could ſhew above 20 Precedents. 4 Le. 185. pl. 186. Trin. 32 Eliz. in the Exchequer.—— 4 Le. 111. pl. 227. S C. —— S.P. 2 Inſt. 79.

2. The King is not inheritable to the Fifteenth, but yet when it is granted, the King is inheritable to *diſtrain* for it. Per Hill [and Norton.] Br. Quinzime. pl. 3. cites 11 H. 4. 35.

3. At a Convocation the *Clergy gave to the King by the Hands of a Metropolitan, Two Shillings in the Pound of the Temporal Poſſeſſions of Religious, and Two Shillings in the Pound for the Tenths, in the Defence of the Church of England*; and the *Exchequer awarded Fieri facias* againſt Abbots &c. to levy it. Br. Quinzime. pl. 1. cites 28 * H. 6. 11.

*Orig is (E. 6)

(N. d) *Subſidy.*

Fol. 208.

See (I. c)

1. 1 **R. 2.** **At a Parliament,** the Commons were ſpared, **and the** Nobles, Biſhops, Abbots, Judges, Eſquires, Parſons, Knights, Vicars, and all Spiritual Perſons charged **with the Subſidies. Speed** 590.

2. 1 **Or 2. Rich. 2. a Subſidy was granted,** That every Man or Woman, under a certain Age, ſhould pay by Poll 12 d. **which was the pretended Cauſe of much Miſchief after. J. Strawe. Speed.** 594.

3. **In Time of H. 8. a Subſidy was granted, to wit,** the Tenth Part of all Temporal Subſtance; **And Cardinal Woolſey, who had the Charge to levy** would [have] had every Man ſworn for his Wealth, **but the Citizens of London refuſed it, and the King was diſpleaſed with Woolſey for it. Speed** 761.

4. 4. **E. 3. 5. There was a ſpecial Grant, ſcilicet** for every Knight &c. for every Trown an armed Man, to go into Gaſcony **&c. and this pardoned by the King.**

5. 18. **E. 3. cap.** 1, 2. Tenths and Fifteenths granted **to the King** to go into France; So that the Money **levied of the ſame** be diſpended in the Buſineſs ſhewed to them, in this Parliament, by the Advice of the great Men thereto aſſigned: And that the Aids beyond Trent &c. be put in Defence of the North.

6. The Subſidy *is uncertain*, becauſe it is *ſet upon the Perſon in reſpect of his Lands or Goods*, which commonly do ebb and flow. 2 Inſt. 77.

* See the Statute at (E. a)

7. *Auxilia at the* Time of the *Confirmation of Charters* &c. *25 E. 1. was a general Word, not only *including* Aids due by Law and Tenure, as Aid to make his Son a Knight, to marry his Daughter &c. But *Aids* alſo *granted by the Free-will of the Subjects in Parliament*, which afterwards were called Subſidies. 2 Inſt. 528. in his Comment upon the Act of the Confirmations of Charters of the Liberties of England &c. made 25. E. 1. where Lord Coke ſays, That yet the Matter, upon which that Act was made, was never in quiet, until it was more particularly explained by divers Acts of Parliament, which we have drawn into one Body of a Law divided into ſeveral Branches. 1. No Man ſhall be charged to arm himſelf, or to find Men of Arms, or any Hoblers or Archers (other than thoſe who hold by ſuch Services, or Devoires of the King, or of other Lords) if it be not by common Conſent, and grant in Parliament. 2. No Man ſhall be compelled to go to the King's War out of his Shire, but where Neceſſity of ſudden coming of ſtrange Enemies into the Realm 3. No Man ſhall be charg'd to give any Wages either to the Preparers or Conveyors

Conveyors of Soldiers, or to the Soldiers, to go into Scotland, Gaſcoign, or elſewhere; but that Men of Arms, Hoblers, Archers, choſen to go into the King's Service out of England, ſhall be at the King's Wages from the Day they depart out of the Counties where they were choſen, till they return; which Acts of Parliament are but Declarations of the ancient Law of England: And according to this antient Law, the Commons after the ſaid declaratory Acts of Parliament did, when this Point concerning Maintenance of Wars out of England came in queſtion, make their continual Claim of their antient Freedom and Birth-right, as in 1 H. 5. and in 7 H. 5. &c. the Commons made Proteſtation that they were not bound to the Maintenance of War in Scotland, Ireland, Calice, France, Normandy, or other foreign Parts, and cauſed their Proteſtations to be entered into the Parliament Roll, where they yet remain; which in effect agreeth with that, which upon like Occaſion was made in this Parliament of 25 E. 1. But here may be obſerved, that when any antient Law or Cuſtom of Parliament is broken, and the Crown poſſeſſed of a Precedent, how difficult a Thing it is to reſtore the Subject again to his former Freedom and Safety.

(O. d) Martial Affairs, *Juſts* and * *Turnaments.*

1. ‡ REX Comitibus Baronibus Militibus, & omnibus aliis hoc inſtanti Die apud Kingſton conventur. ad Torneamentum ibidem Salutem. Prohibemus vobis ſub Pœna Amiſſionis omnium Terrarum & Tenementorum, quæ in Regno noſtro tenetis, ne ibi vel alibi dicto Die vel aliis Diebus turneare, Juſtos facere, Aventure quærere, ſeu alio Modo ad Arma ire præſumetis ſine || licentia noſtra ſpeciali. 1. E. 1. Rot. Pat. Memb. 15. Conſimile Memb. 17. Simile 2. E. 1. Rot. Pat. Memb. 19. 22. 24.

*It was called Turnamentum decurſus, of Turning and Winding, in reſpect of the Agility, as well of the Horſe as of the Man; Therefore in

For in thoſe Days this Deed of Chivalry was at Random, whereupon great Peril enſued. Therefore in the Reign of E. 3. for Safety. ——— ‡ There is no Number to this Plea in Roll.

|| *But* if the King makes Proclamation, *That there ſhall be Juſts and Turnaments* &c. And *one kills another* in Juſting &c. *it it not Felony.* Contra where it is without Command or Proclamation of the King. Br. Proclamation pl. 13. cites 11 H. 7. 23 ——Br. Corone. pl 228. (229) cites S. C. per Fineux.——— S. P. 3 Inſt. 56. cap. 8. cites 11 H. 6. 22.—— S. P. 3 Inſt 160.

In the Reign of H 2. it was enacted, that if in ſuch Caſe one was ſlain it ſhould be no Felony; For that in a friendly Manner they contended to try their Strength, and to be able to do the King Service in that Kind as Occaſion ſhould be offered. 3. Inſt. 56. cap. 8. cites Mirror, cap. 1. S. 13. Des Aventures.

Bacon of Government, in his ſecond Book cap. 11. pag. 107, 108. ſays that this of Turnament crowded at length among other Things to be *under the Determination of the Marſhal's Court, tho' ſometimes under the Direction of the Conſtable* of England, as well as at other Times under the Marſhall; And calls it a *A Sport, which, like a Sarcaſm, tickles the Fancy, but wounds the Heart*, and being of as little Uſe in a Commonwealth as of Benefit, is therefore laid aſide.

(P. d) * *Murage.*

See (E) pl. 9 12. 14)

1. AMONG the Petitions of Parliament of 18 E. 1. there is ſuch Petition, Cives London petunt Muragium propter Deteriorationem Murorum; Rex non vidit quod ſit Neceſſarium. 1. E. 2. Rot. Pat. Part. 2. M. 17. Pro Murag. Lond. 4. E. 2. Rot. Pat. M. 20.

* Murage *is a reaſonable Toll* to be taken of every Cart, Wayne, or Horſe laden

coming to that Town, *for the incleſing of that Town with Walls* of Defence *for the Safeguard of the People* in Time of War, Inſurrection, Tumults, or Uproars, and is due either by Grant or Preſcription. 2 Inſt 222. —— But if a Wall be made which is not defenſible, nor for Safeguard of the People, then ought not this Toll to be paid; For the End of the Grant or Preſcription is not performed. Ibid.——— Murage is only a Toll payable for the Reparation of Walls out of Things ſold in Market overt by Retail

tail, and *does not lie in Grant but in Preſcriptions.* Dav. Rep. 15. a. Mich. 5 Jac. B. R. in the Caſe of Cuſtoms.

There is no Number to this Plea in the Roll.

[2.] 23. E. 1. Lib. Parl. 104. Ad Petitionem Hominum Wigorum, quod Rex velit eis concedere Muragium pro Villa ſua claudenda ad Securitatem ejuſdem Villæ. **Ita Reſponſum, fiat per.**

(Q. d) *Tronage. Peſage.*

There is no Number to this Plea in the Roll.

[1.] TRonagium **debet dari** de Lanis & Peſagium de Mercibus, **and not Tronagium de Mercibus. Adjudged.** H. 5. E. 3. B. R. Rot. 124.

(R. d) *Aulnage.*

Fol. 209.

Prynne's Cott. Rec. Abr. 71. N° 31, 32. S. C.

1. ROT. Parl. 22. E. 3. N. 31, 32. **There is** a Petition of the Workers of Clothes of Worſted **in Norfolk,** againſt the Office **of the Aſſay of the Aulnage of Worſted granted to Robert de Poley, which was after repealed by the Counſel of the King as there appears.**

Prynne's Cntt. Rec. Abr. 71. 82 N°. 11. S. C.

2. **Rot. Parl.** 27. E. 3. n. 11. **The** Commons pray to take away the Office **of Aulnage. Anſwer. They ſhall treat to give Recompence to the Officer.**

Prynne's Cott. Rec. Abr. 76. N°. 46.

3. **Rot. Parl.** 25 E. 3. 1 **Part. N.** 40. **The** Commons pray that the Office of Aulnage be taken away. Is [viz.] a Motion touching the Aulnage and Meaſure of Cloth. Anſwer, by a Special Statute made thereof in this Year.

4. 25 *Ed.* 3. 1. *All Manner of Cloths vendible, ſhall be meaſured by the King's Aulnager, or his Deputies, and all Cloths which ſhall be found of leſs Meaſure by a Yard than the Aſſize ſhall be forfeited to the King.*

An Information was brought againſt the Defendants, wherein the Informer ſets forth, that on ſuch a Day and Place, he did ſeiſe as forfeited, a *Cloth called a double Bays, and* and another called a *ſingle Bays,* being Goods of Perſons unknown, made and wrought to ſell and utter, and which were *put to Sale, not being ſeal'd* by the Mark of

5. 27 *Ed.* 3. 4. *Cloths ſhall not be forfeited, altho' they want of the Aſſiſe; but the King's Aulnager ſhall meaſure the Cloth, and mark how much it contains, and for ſo much as the Cloth wants of the Aſſiſe, an Allowance ſhall be made to the Buyer, and the Aulnager ſhall have for his Fee, an Halfpenny for a whole Cloth, and a Farthing for half a Cloth, and nothing for Cloths that are leſs; but Cloths offered to Sale before they are marked, ſhall be forfeited to the King, and taken into his Hands by the ſaid * Collector or Aulnager, or by the Deputy of one of them, or elſe by the Bailiffs of the Town where ſuch vendible Cloths not ſealed ſhall be found.*

6. There were ſeveral other Statutes concerning Aulnage, As 3 *R.* 2. *cap.* 2. which enacted, That *if the Aulnager ſeal faulty Cloth, or ſeal it for more than it is, the Cloth ſhall be forfeited, and he puniſhed.* ——— And alſo, 13 *R.* 2. *cap.* 11. which *exempted coarſe Cloths from being of the Aſſiſe of other Cloths.* ——— And alſo, 17 *R.* 2. *cap.* 2. which enacts, That *every Man of the Realm may make and put to Sale, and ſell Cloths, as well Kerſies as other, of ſuch Length and Breadth as himſelf pleaſe, paying the Aulnage Subſidy, and other Devoyers, that is to ſay, of every Piece of Cloth after the Rate, notwithſtanding any Statute, Ordinance, Proclamation, Reſtraint, or Defence made to the contrary, and that none ſhall ſell or put to Sale any Clothes before that they be meaſured by the King's Aulnager, and ſealed with the Seal to that ordained, upon the Pains contained in the Statutes thereof made, and that no Man ſhall put, meddle, cauſe, nor make other Diſceit in the Clothes of Kerſies, upon Pain of Forfeiture of the ſame.* ———And alſo, 5 & 6 *E.* 6. cap. 6. which *gives a Forfeiture of* 20 *s' for not paying the Aulnager's Fee,*

and

and prohibits Cloth to be exported without the Aulnager's and Owner's Seal. ——And alſo the Act of 8 *Eliz.* 5 which enacts, *That the Length of Lancaſhire Cloths ſhall be marked, and that the Queens Seal ſhall be fixed thereto on Pain of Forfeiture, and* alſo, *that the Aulnager ſhall Seal no Cloth without Weighing, on Pain of* 20 *s. for every Pack.* But ſince thoſe Statutes there is a Statute made as follows, viz.

the Maker, and the Seal of the Aulnager &c. *Contra Formam Statuti* &c. the Defendants

claimed Property ſeverally to the ſaid Bays, and ſeverally demurred to the Information; The Queſtion was, Whether the Subſidy of Aulnage was due for Bays by Virtue of the Statute of 27 E. 3. cap. 4, not being any of the Cloths mentioned in the Statute, and differing from them both in Weight, Length and Breadth? Hale Ch. B. ſaid, That it would be hard to bring them within that Statute, for the Reaſon before mentioned, but there is a concurrent Statute made Anno 17 R. 2. cap. 2. which makes the Quantity a neceſſary Ingredient to the Subſidy; For 17 R. 2. proportions the Subſidy given by 27 E. 3. which ſettles the Duty only; and, agreeing with the other Judges in Opinion for the Plaintiff, ſaid, He grounded his Opinion for the Duty upon 17 R. 2. the Words whereof are, (*Paying the Duty according to the Rate*) which Words bring the Statute of 27 E. 3. to that of 17 R. 2. and upon both theſe Statutes together the Duty ariſes, and the Penalty for Non-payment of it; and the Generality of the Words (*Cloathes, as well Kerſies as other*) compriſe all; and there cannot be more comprehenſive Words to include all Manner of Clothes; and by the Demurrer they are confeſſed to be Clothes as laid in the Information. Hard 205. 214 Mich. 13 Car. 2. in Scacc. Vere, qui tam &c. v. Sampſon & al

* Powis, Turton, and Ward, Ch. B. held, that no Perſon had Authority to ſeiſe the Cloth forfeited by this Statute, but only thoſe very Officers expreſſed in that Statute; and therefore they held, that a Deputy Aulnager whoſe Deputation extended only to the Counties of Devonſhire and Cornwall, had no Authority to ſeiſe at Ratcliff. Carth. 326. Trin. 6 W. & M. in Scacc. Martin v Urlsford.

7. 11 & 12 *W.* 3. *cap.* 20. *S.* 3. Enacts, that *the Subſidy and Aulnage of the old and new Draperies, and of all Woollen Manufactures ſhall ceaſe after the Grants thereof are expired.*—[Thoſe Grants are long ſince expired.]

(S. d) Proclamation. The Force of a Proclamation.

1. WHEN in the Time of E. 1. the Jews were baniſhed out of the Realm, all their Debts and Goods remained to the King, and were his Chattels, and thereupon Proclamatio ſolemnis fiebat per totum Regnum, & quod omnes qui Debita aliqua alicui Judeo debebant aut de eorum Debitis, Bonis & Catallis aliquid ſciebant, Domino Regi aut alicui de Concilio ſuo ſcire facerent, de qua quidem Proclamatione nullus dicere poteſt quin ſcivit aut ſcivisse debuit; And becauſe the Defendant had concealed a certain Debt, Ideo in Miſericordia. 21 E. 1. lib. Parl. 62. b. 63. Adjudged.

2. Vide Egerton's Poſtnati, fol. 12. and 31 H. 8. cap. 8. concerning the Force of Proclamations. 35 H. 8. cap. 23.

3. By 25 H. 8. cap. 2. It is enacted, that the Lord Chancellor and others ſhall tax the Price of certain Victuals, and that after a Proclamation under the Great Seal ſhall be made thereof, and that Victuallers &c. ſhall be bound to ſell according to the Prices ſet forth in the Proclamation under the Pains to be expreſſed and limited in the ſaid Proclamation to be forfeited and levied to the Uſe of the King in ſuch Manner as by the ſaid Proclamation ſhall be declared.

4. By 25 H. 8. cap. 12. It is enacted, That Proclamation ſhall be made of the Deceit of Elizabeth Barton, and that it ſhall be contained in the Proclamation, that all Books &c. concerning the ſaid Deceits ſhall be brought to the Ld. Chancellor, under Pain of Impriſonment and Fine to the King, and that every one [who] ſhall offend againſt this, being thereof by due Examination convicted before any of the Council of the King, ſhall ſuffer Impriſonment, and make Fine to the King by the Diſcretion of the Council of the King, and according to the Merits of his Offence.

5. 35 H. 8. cap. 16. The Statute of Strangers where there is a Proviſo that the Statute ſhall not be prejudicial to the Proclamation made by the King **for the Payment of Cuſtom by Strangers** granted to endure for certain Years, but that the ſaid Proclamation ſhall ſtand in the ſame Force as it is, and as if this Act had not been made.

† There is no ſuch Year of Caſes in the Year Book to examine this by. The Words (Rex * Fol. 210. per totum) ſeem not to be right, and (Rex) at leaſt, ſeems to be Surpluſage; but the Senſe ſeems perfect enough without any of them.

6. 27 E. 3. **By the Statute of the Staple it was ordained,** That Merchants aliens **might carry over the Sea Merchandizes of the Staple, but not Merchants** Denizens, **and after by the Aſſent of the King and his Council, Liberty was granted, and Proclamation made accordingly to Denizens for a certain Time,** and becauſe Merchants Denizens doubteth them to be impeached in time to come for their Merchandizes which they have paſſed by * Virtue of ſuch Grant and Proclamation, for as much as they were made out of Parliament, **therefore it is granted now by Parliament in** 34 E. 3. 3. cap. 21. †P. 36. E. 3. B. R. **Rex per totum**; Indictamentum diverſorum pro Granis transferendis in partes exteras contra Prohibitionem Regis per Proclamationem.

7. **Hill. 1 E. 2. B. R. Rot. 38. Diverſi implacitantur de eo quod contra Proclamationem Regis E. 1. inhibentem** ne quis duci faceret extra Regnum **Angliæ** Equos, Armaturas, Monetam, quæcunque Vaſa Aurea ſeu Argentea in Maſſa ſine Licentia &c. **ipſi abduxerant divers Sums of Money &c.**

8. **The King by Proclamation may** make the Coin of a Foreign Realm current here. 5 El. cap. 11. admitted.

Prynne's Cott Rec. Abr. 557. No. 11 S. C.

9. **Rot. Parl. 7 H. 5. N. 11.** Power given to the Council to make an Ordinance that the Monies of England be not tranſported **out of the Realm.**

The King by his Proclamation, or otherways, *cannot* change any part of the Common Law, Statute, or Cuſtoms of the Realm; Nor can he *create any Offence* by Proclamation, *which was not an Offence before*, that being to change the Law, and therefore *that which cannot be puniſhed without Proclamation cannot be puniſhed with it*; And the Statute 31 H. 8. cap. 8. tho' it gives more Power to the King than he had before, yet it is there declared, That Proclamations ſhall not alter the Law, Statutes, or Cuſtoms of the Realm, or impeach any in his Inheritance, Goods, Body, Life &c. But if one be indicted for a Contempt againſt a Proclamation, he ſhall be fined and impriſoned, and ſo impeached in his Body and Goods. 12 Rep. 75. in the Caſe of Proclamations, cites Forteſcue de Laudibus &c. cap. 9. 18. 34. 36. &c. ——— But a Thing which is puniſhable by Law, by Fine and Impriſonment, if the King prohibits it by his Proclamation before that he will puniſh it, and ſo *to warn his Subjects of the Peril* of it; there, if he permits it after, this is a Circumſtance which aggravates the Offence. But he cannot by Proclamation make a Thing unlawful which was permitted by the Law before; and this is well proved by the ancient and continual Forms of Indictments, which all conclude Contra Legem & Conſuetudinem Angliæ, or Contra Leges & Statuta &c. But *no Indictment* was ever ſeen to conclude *Contra Regiam Proclamationem.* 12 Rep. 75. Mich. 8 Jac. in the Caſe of Proclamations.

10. It was agreed for Law, that the King may make Proclamation to his Subjects, *Quoad Terrorem Populi* to put them in Fear of his Diſpleaſure, *but not on other Pain certain*, As to forfeit their Lands or Goods, or to make Fine, or to ſuffer Impriſonment or other Pain; For no Proclamation in itſelf will make a Law which was not before, but to confirm and ratify an ancient Law, and not to change this or make new; Yet diverſe *Precedents were ſhewn* out of the Exchequer *to the contrary, but the Judges had no Regard to them.* Dal. 20. pl. 10. 2 & 3 P. & M. Anon.

11. A Proclamation *prohibiting Importation of Wines from France upon Pain of Forfeiture* is againſt Law, it not appearing that there was any War between the Realms. 2 Inſt. 63. cites Paſch. 1 Eliz. in the Exchequer. German Cioll's Caſe.

12. Proclamations are *ſo far juſt, as* they are made *Pro Bono Publico.* Hob. 251. in Armſted's Caſe.

13. A

13. A Proclamation *binds not, unleſs* it be *under the Great Seal.* Cro. C. 180. Hill. 5 Car. B. R. Keyly v. Manning.

Cro. 2 Roll. R. 172 Howard v. Slater.

(S. d. 2) Proclamation. *By whom made, and how pleaded.*

1. WHERE *Pariſhioners make By-Laws that every one ſhall pay a Sum for Reparation of their Church, and for Default* of Payment *to diſtrain by Aſſent* &c. there thoſe who are abſent, if Proclamation be made to do it, ſhall be bound as well as thoſe who are preſent; Per Kirton; quod non negatur. And ſo ſee that a common Perſon may make Proclamation. Br. Proclamation, pl. 1. cites 44 E. 3. 18.

Br. Cuſtom, pl. 6. cites 44 E. 3. 18. ——*None* can make Proclamation *but by Authority of the King or Mayors* &c. *who have Privilege in Cities and Boroughs* to do it, or have uſed it *by Cuſtom*; and Sir Edmond Knightly Executor of Sir William Spencer made Proclamation in certain Market Vills, that the Creditors ſhould come by a certain Day, and claim and prove their Debts &c due by the Teſtator; and becauſe he did it without Authority, he *was committed to the Fleet, and put to a Fine.* Br. Proclamation, pl. 10. cites 22 H. 8.——Ibid. pl. 1. cites S. C. *But* Brooke ſays *in London* they uſe to make Proclamation *in the Name of the Mayor*; and adds a Quære if it be by Cuſtom or not.——Went. Off. of Executors 160. cites S. C.

2. The Court upon the firſt Motion were all of Opinion, That where a Proclamation is pleaded, it *muſt be pleaded to have been under the Great Seal*; for it doth not bind unleſs it be under the Great Seal; and if 'tis denied, there can be no *Iſſue* upon it, but only *Nul tiel Record*, which cannot be unleſs he pleads it to be Sub Magno Sigillo. But afterwards it being again moved, Jones and Windham ſeemed to doubt thereof; becauſe when it is pleaded, That ſuch Proclamation was made, it ſhall be *intended duly made*; as in Reſcous, if it be returned Quod fecit Warrantum, altho' it be not pleaded to be in Writing, yet it ſhall be intended. But it was anſwered, That true it is when it is but by Way of Inducement; but otherwiſe when it is the Subſtance of the Plea. Whereupon it was adjourned. Cro. C. 180. Hill. 5 Car. B. R. Keyley v. Manning.

Objection was made to the pleading a Proclamation, that it was not ſaid to be under the Great Seal, as all Proclamations are or ought to be, with a Writ to the Sheriff to proclaim them; but it ſeems as if the Court gave no Regard thereto. See 2 Roll. Rep. 172. Trin. 18 Jac. B. R. Howard v. Slater.

* (U. d.) King. [*Guardian.*]

*N.B. There is no (T. d.) in Roll.

1. IN the Abſence of E. 1. **his Brother Edmund was made Guardian of the Realm. (Nota the Name of Guardian)** 18 E. 15. b.
2. **Leonell the ſecond Son of** E. 3. **was Cuſtos Regni.** 21 E. 3. 59.

(X. d.) King. Guardian of the Realm. *The Power of the Guardian* in the Abſence of the King.

1. 1 E. 2. **Rot. Pat. Part** 2. M. 28. **Rex conceſſit Petro Gaveſton Cuſtodi Regni &c. poteſtatem** ad concedendum Licentiam eligendi Paſtores in Eccleſias Cathedrales & Conventuales & adhibendum Aſſenſum Electionibus Nomine Noſtro & Fidelitat. capiend. & Temporalia reſtituend. & Benefic. &c. conferend. & Ordinand. de Cuſtodiis & Maritagiis.

See this Roll at large in the Appendix to Dr. Brady's Continuation of the Hiſtory of England. pag. 34. N°. 49.

2. The

2. **The Guardian of the Realm, in the Abſence of the King,** may preſent to the Advowſon in Right of the King. 18 E. 3. 15. b.

See ſome Precedents of ſuch Writs at the Beginning of the above mentioned Appendix.

3. **When there is a Guardian of the Realm in the Abſence of the King, the** Writs Original ſhall be in the Name of the King. 21 E. 3. 58. b.

4. But **the** Teſte ſhall not be **Teſte** Meipſo, but **Teſte** L. filio noſtro chariſſimo Cuſtode Angliæ. 21 E 3. 59.

5. 14 E. 1. **Rot. Clauſo Memb.** 3. 4. Teſte Edmundo Comite Cornub. Conſanguino Regis apud Weſtm. **(This Edmund was Cuſtos Regni.) and ſo** 16 E. 1. **Memb.** 9. **in Dorſo & 7. in Dorſo.**

(Y. d) King. *What* Things *ſhall go in Succeſſion*, and not to his Executor.

Fol. 211.

* Br. Preſentation, pl. 11. cites S. C.—— In Quare Impedit it appears that *Chattles may deſcend to the King*; for where the King has the † *Temporalties of a Biſhop*, and dies, thoſe, *and all Preſentations depending upon it*, ſhall deſcend to the New King. Br. Chattles, pl. 2. cites 11 H. 4 7.—— † S. P. Br. Prerogative, pl. 85. cites 44 E. 3. 42. and the Executors ſhall not have them.

1. **IF the King** has Title to preſent to a Church which is void, and dies before Preſentment, **his Succeſſor ſhall have the Preſentment, and not his Executor.** * 7 H. 4. 25. b. 18 E. 3. 20. 21 E. 3. **F. Eſtoppel. 161. admitted.** 1 E. 3. 22. b. 21. 6.

S. P. Br. Chattles, pl. 2. cites 11 H 4 7.—— S. P. Br. Prerogative, pl. 81. cites 7 H. 4. 41. Per Gaſcoigne for Law; for it *is a Chattel Real annexed to the Crown.*

2. So **if the King be** ſeiſed of a Ward, **and dies, his Succeſſor ſhall have it, and not his Executor.** 7 H. 4. 42. b. 21 E. 3. F. Eſtoppel 161.

3. **The** Treaſure and other valuable Chattels, **are ſo neceſſary and incident to the Crown, that in Caſe the King dies, they ſhall go with the Crown to the Succeſſor, and not to the Executors.** Co. 11. 92. **Count** *Devon.*

4. The King can have nothing in his natural Capacity, unleſs in Right of his Dutchy, or an Eſtate Tail by the Statute De Donis, and *Dutchy Lands* would now be in the Queen, if not kept ſeparate by Act of Parliament. Per Holt. Far. 78. Mich. 1 Ann. B. R. in Caſe of the Queen v. Smith.

(Y. d. 2) *Deſcent of Lands.* How.

The Reaſon of theſe Caſes is; becauſe the Quality of the Perſon does in theſe, and many other like Caſes alter the Deſcent, ſo as the Lands and Poſſeſſions where-

IF the *King hath Iſſue a Son and a Daughter by one Venter and a Son by another* Venter, *and purchaſes Land and dies*, and the *eldeſt Son enters and dies without Iſſue*, the Daughter ſhall not inherit theſe Lands, nor any other Fee Simple Lands of the Crown, but the younger Brother ſhall have them; Wherein note, that neither Poſſeſſio Fratris doth hold of Lands of the Poſſeſſions of the Crown, nor Half Blood is no Impediment to the Deſcent of the Lands of the Crown. Co. Litt. 15. b.

2. If one that is *King by the Deſcent of the Part of his Mother purchaſes* Lands *to him and his Heirs*, and *dies without Iſſue*, this Land ſhall deſcend to the Heir of the Part of the Mother, but in the Caſe of a Subject, the Heir of the Part of the Father ſhall have them. Co. Litt. 15. b.

3. The

3. The *eldeſt Daughter and Siſter* of a King ſhall *inherit all his Fee Simple Lands.* Co. Litt. 15. b.

4. If the *King purchaſes Lands* of the Cuſtom of *Gavelkind*, and *dies, having Iſſue divers Sons*, the eldeſt Son ſhall only inherit theſe Lands. Co. Litt. 15. b.

of the King ſeiſed is in Jure Coronæ ſhall ſecundum jus Coronæ attend

upon and follow the Crown, and therefore to whomſoever the Crown deſcends thoſe Lands and Poſſeſſions deſcend alſo; For the Crown and the Land, whereof the King is ſeiſed in Jure Coronæ are Concomitantia. Co. Litt. 15 b.

5. The King has two Capacities; for he has two Bodies, of which the one is a Body Natural, conſiſting of natural Members, as every other Man is, the other is a Body Politick, and his Members thereof are his Subjects. He may take in his Body Natural, Lands or Tenements, as Heir to any of his Anceſtors, and alſo in this Capacity may *purchaſe* to him and his Heirs, and his Heirs ſhall retain it notwithſtanding that he is removed from the Royal Eſtate. And he may alſo take or purchaſe Lands or Tenements in Fee in his Body Politick, that is to ſay to him and to his Heirs Kings of England, or to him and to his Succeſſors Kings of England; And ſo his double Capacity remains, as it does in other Perſons, who have a double Capacity, As Biſhop or Dean; And to prove that the Eſtate Royal does not * confound the other Capacity the Caſe in 45 Aſſ. 6. was cited, where it appears that King H. 3. gave a Manor to the Earl of Cornwal in Tail, ſaving the Reverſion to him, and died; the Earl gave the Manor to another in Fee by Deed with Clauſe of Warranty in Exchange for another Manor, and after the Earl died without Iſſue having Aſſets, and the Warranty and Aſſets deſcended upon E. 1. being Heir to the Earl; And there it was adjudged, That the King, by this Warranty with Aſſets, was barred, by which the Aſſignee of the Alienee had Reſtitution of the Manor out of the Hands of King E. 3. who had ſeiſed the Manor into his Hands for the Reaſon aforeſaid. Which Caſe proves that the Capacity, which the King has in his natural Body, remains after he is King, or otherwiſe the Warranty could not have deſcended upon him, nor the Aſſets to him as Heir to the Earl his Anceſtor; and ſo by the Warranty and Aſſets which deſcended upon the Body Natural of the King, he was barred of the Reverſion, which he demanded in his Body Politick; For it was Parcel of the Poſſeſſions of the Crown for any thing which appears; And as his Capacity remains to take by Deſcent as Heir, ſo it remains to purchaſe therein. Arg. Pl. C. 234. 3 Eliz. in the Caſe of Willion v. Lord Barkley.

*S. P. Per Weſton J. Pl. C. 242. in S. C.

6. The King may take in his Body Politick, as King, to him and his Heirs, or as King to him and his Succeſſors; For he may have Heirs in his Body Politick, and he may have Succeſſors in his Body Politick; And therefore a *Gift to him his Heirs and Succeſſors* is good to the Body Politick in both the Limitations; For *if the Heirs fail, it ſhall go to the Succeſſors*; And his Heirs, as Heirs to the King, may take in their Bodies Politick. Per Weſton. J. Pl. C. 242. b. in the Caſe of Willion v. Lord Barkley.

(Z. d) *King. In what Caſe by the *Name of King*, his *Succeſſors* ſhall be *comprehended.*

*A Remainder limited to King H. 7. *by the Name of King H. 7.* is well limited to him by ſuch Name; for the King naturally, aptly, and fully cannot

[1.] † THE Succeſſors of K. H. 8. are within the Statute 27 H. 8. cap. 24. of Reſumption of the Liberty of Purveyance to have Benefit of the Statute, though they are not named; For they are included within the general Word King. Tr. 38. El. B. R. ‡ *Lord Darcie's* Caſe adjudged.

purchaſe by other Name than by Name of King; For the Name of King has merged his Surname, and *in the Name of King*, his *Surname and proper Name alſo are included.* Per Brown J. Pl. C. 244. b Trin. 4 Eliz. in the Caſe of Willion v. Lord Barkley.

Lord Coke, in his Commentaries upon Magna Charta, cap. 1. ſays, That at that Time *Hæredes* were *taken for Succeſſores*, and *Succeſſores for Hæredes*. 2 Inſt. 5. ——— S. P. Ibid. 7. that antiently Succeſſores and Hæredes were Synonima. ——— † There is no Number to this Plea in Roll. — ‡ Cro. E. 512. S. C.

2. Patents, without the Words (Pro nobis, Hæredibus, & Succeſſoribus noſtris) and being *granted for a Corporal Exerciſe* of the Office or Service are good. Cited per Saunders Ch. Baron. Pl. C. 459. a. as Reſolved by all the Juſtices. 28 April 1 Mar.

S. P. Pl. C. 176. Mich. 4 Mar. in the Caſe of Hill v. Grange.

3. The Words (*Per nos*) in the King's Grant *are ſpoken* by him *in his Body Politick*, and contain Heirs and Succeſſors, without preciſe Mention. Per Saunders Ch. B. Pl. C. 458. a. Paſch. 16. Eliz. in Sir Thomas Wroth's Caſe.

4. King H. 6. Anno 20. of his Reign, granted for himſelf, and did not ſay (for his Succeſſors) *to the College of* All Souls in Oxford, *for them, their Tenants, and Farmers, to be diſcharged of Toll*; It was agreed per Cur. That this Grant to be diſcharged was good againſt his Succeſſors, though not named, as well as in Caſe of the Grant of an Intereſt, which in Plowd. Com. in Sir Thomas Wroth's Caſe, was agreed to be good. Yelv. 13. Mich. 44 & 45. Eliz. B. R. Wood v. Hamſtead.

*All the Barons in the Exchequer were of Opinion, that

5. A Grant by the King, without the Words (Pro ſe & Heredibus) or (Succeſſoribus) of an * *Annuity, or Rent, Payable at the Exchequer, or by the Hands of any Receiver*, binds the Succeſſor. Jenk. 209. pl. 41.

ſuch a Grant of an Annuity ſhould bind the Heirs and Succeſſors of the King, notwithſtanding the Omiſſion, inaſmuch as *the Body Politick* of the King *is charged*, which is perpetual, and never dies. Pl. C. 457. a. Trin. 15 Eliz. Sir Thomas Wroth's Caſe. — S. P. Pl. C. 176. Mich. 4 Mar in the Caſe of Hill v. Grange.

A Gift to the King of any Hereditament is a Fee Simple,

A *Gift to the King* paſſes the Inheritance without the Word Succeſſor. *So* of a *Gift* made *by the King*. Jenk. 209. pl. 41.

7 A Deed made to the King by the Words (*Carolo Regi*) or (*Regi Angliæ*) paſſes the Inheritance to the Crown without the Word (Succeſſors) Jenk. 124. in pl. 50.

as a Gift to a Mayor and Commonalty, without mentioning Succeſſors. By all the Judges of England. Jenk. 224. pl. 84. —— S. P. Jenk. 271. pl. 89.

Dyer Ch. J. ſaid, That the *adding of Succeſſors* in Grants to the King, *is* but *of late Time*, and a New Device. Pl. C. 250. Trin. 4 Eliz. in the Caſe of Willion v. Lord Barkley.

(A. e) * Council Privy of the King.

‡ The Council Board *is* a moſt Noble, Honourable, and Reverend Aſſembly of the King and his

1. † TR. 16. E. 2. B. R. Rot. 42. Baron de Bellomonte was committed to Priſon for refuſing to counſel the King, **touching a Truce propoſed between the King and the Scots, the ſaid Baron being of the Privy Council of the King.**

Privy Council in the King's Court or Palace; With this Council the King himſelf doth ſit at his Pleaſure; Theſe Councellors conſult of, and for the publick Good, and the Honour, Defence, Safety, and Profit of the Realm: It is *called* the Council Table, *a Conſulendo*, Secundum Excellentiam. They are called *Concilium Regis Privatum*, Concilium *Secretum*, and *Continuum* Concilium Regis. The Number of them *is at the King's Will*, but *of antient Time they were* 12, or thereabouts. 4 Inſt. 53. cap. 2

† My Lord Coke ſays, That the Duty of a Privy-Councellor appears by his Oath, which conſiſteth of theſe Articles or Parts 1. That he ſhall, as far forth as Cunning and Diſcretion ſuffereth, truly, juſtly, and evenly counſel and adviſe the King in all Matters to be communed, treated, and demeaned in the King's Council, or by him as the King's Counſellor. 2. Generally, in all Things that may be to the King's Honour and Behoof, and to the Good of his Realms, Lordſhips, and Subjects, without Partiality, or Exception of Perſons, not leaving, or eſchewing it to do for Affection, Love, Meed, Doubt, or Dread of any Perſon or Perſons. 3. That he ſhall keep ſecret the King's Council, and all that ſhall be communed by way of Council in the ſame, without that that he ſhall commune it, publiſh it, or diſcover it by Word, Writing, or in any otherwiſe to any Perſon out of the ſame Council, or to any of the ſame Council, if it touch him, or if he be Party thereof. 4. That he ſhall not for Gift, Meed, nor Good, nor

Promiſe

Promiſe of Good by him, nor by mean of any other Perſon, receive or admit from any Promotion, [or] favouring, nor for declaring, letting, or hindring of any Matter or Thing to be treated or done in the ſaid Council. 5. That he ſhall, with all his Might and Power, help and ſtrengthen the King's ſaid Council, in all that ſhall be thought to the ſame Council for the univerſal Good of the King and his Land, and for the Peace, Reſt and Tranquility of the ſame. 6. That he ſhall withſtand any Perſon or Perſons, of what Condition, Eſtate, or Degree they be of, that would by way of Fear, attempt or intend the contrary. 7. And generally, that he ſhall obſerve, keep, and do all that a good and true Councellor ought to do unto his ſovereign Lord. By the Force of this Oath, and the Cuſtom of the Realm, he is a Privy Councellor, without any Patent or Grant, during the Life of the King that maketh choice of him. 4 Inſt. 54. cap. 2.

2. **Rot. Parl. 21 E. 3. N. 28. The Commons pray, that no People from henceforth by Suggeſtion, or Conſideration of any Accuſers voluntary be commanded** by Writ to come to the Council of the King, and then be conſtrained and compelled to make Fine, or **pay down a great Sum of Money, or otherwiſe to travel over the Sea as before this Time has been in Arreriſement of all the People, pray that ſuch Dureſſes and Grievances from henceforth be not done.** *Anſwer.* **It pleaſes our Lord the King, that henceforth ſuch Things be not done againſt Reaſon.** Prynne's Cott. Records Abr. 56. 21. E. 3. N°. 28.

3. **Rot. Parl.** 22 E. 3. **N.** 4. Fifteenths granted upon **diverſe** Conditions **to be entred in Rolls of Parliament, ſcilicet, among others,** That no Impoſition, Tallage, nor Charge by way of Loan, nor other whatſoever Manner be laid by the Privy-Council of the King, without their Grant and Aſſent in Parliament.

4. **Rot. Parl. 2. part N. 16. The Commons pray, that the *Loans which are granted to the King by divers Perſons of the Commons be releaſed, and that none from henceforth be compelled to make ſuch Loans or Contributions againſt their Wills, for it is contrary to Reaſon and Franchiſe of the Land, and that Reſtitution be made † to thoſe who have made ſuch Loans or Contributions. Anſwer; It pleaſes the King that it be ‖ ſo.** * Orig. is (Appreſts) ‖ Fol. 212. † Orig. is (Eniſi.)

5. **Rot. Parl. 25 E. 3. 1. Part N. 16. The Commons pray,** that no Man be put to anſwer of his Franktenement, nor of any Thing which touches Life and Member, Fines and Redemptions, by Appoſals **before the Council of the King, nor before his Miniſters whatſoever, unleſs by Proceſs of Law thereof * heretofore uſed.** *Anſwer;* **It pleaſeth the King, that the Laws be kept, and that none be bound to anſwer of his Franktenement, unleſs by Proceſs of Law; but of Things which touches Life or Member, Contempts or Exceſs, be it done as has been uſed heretofore.** Prynne's Cott. Records Abr. 25 E. 3. No. 16. * Orig. is (en arere.)

6. **Whereas diverſe are accuſed, and are made to come before the Council of the King by Writ or other Commandment of the King, upon * grievous Pain againſt the Law, the Commons pray, that from henceforth if any Accuſer propoſes any Matter for the Profit of the King, that this Matter be ſent to the Judges of the one Bench or the other, or of Aſſ. thereof to enquire and determine according to the Law; and if it touches the Accuſer or † Party, let him ſue at the Common Law; and that no Man be** put to Anſwer without Preſentment before Juſtices, or Thing of Record, or by due Proceſs and Writ original, according to the ancient Law of the Land; **And if any Thing from henceforth be done to the contrary, be it void in Law, and held for Error. Anſwer; Becauſe this Article is an Article of the Great Charter, the King willeth it. Rot. Parl. 42 E. 3. N. 12.** Prynne's Cott. Records Abr 106. 42 E. 3. No. 12. * Orig. is (Grief.) † Orig. is (Parte cite ſa Suit.)

7. **1 H. 4. N. 160. The Commons pray, that** no Action perſonal between Party and Party be held by Privy Seal before the Council of the King; **and they in the Petition ſhew, that in the Time of R. 2. it was ſo done for Brocage made to ſome of the Council. Anſwer; Be the Statute, thereof made, held and kept there, where the one Party is ſo great and rich, and the other poor, that he cannot otherwiſe have to recover.** Prynne's Cott. Records Abr. 398. 1 H. 4. N°. 161 is S. P. But N°. 160 is about Priſage of Wines.

8. 2 H.

Prynne's Cott. Records Abr. 416. 2 H. 4. No. 69.

8. 2 H. 4. N. 69. **The Commons pray, that all Writs or Letters of Privy Seal of our Lord the King directed to diverſe Lieges of the King to appear before our Lord the King in his Council, or in his Chancery, or Exchequer, upon certain Pain comprized therein, be for ever hereafter ouſted, and that every Liege of the King be treated according to the rightful Laws of the Land anciently uſed. Anſwer; Let not ſuch Writ be made unleſs in Caſe where it ſeems neceſſary, and this by Diſcretion of the Chancellor or Council of the King for the Time being. Vide Simile** * 4 H. 4. N. 28.

* This in Prynne's Cott. Rec. Abr. 418. is a different Point.

9. Mr. Prynne, in his Animadverſions &c. on 4 Inſt. pag. 45. cap. 2. refers the Reader for the *ancient Juriſdiction* and Proceeding of the King's Council to Mr. William Lambard's Archaion. 108 to 116. Mr. Crompton's Juriſdiction of Courts, fol. 29 &c. The ſeveral Bundles of Petitions to the King and his Council in the Tower of London, and the Anſwers to them; Placita Parliamentaria coram Rege & Concilio in the Tally-Office in the Exchequer, and in the Parchment Book of them in the Tower under King Edward I. The firſt Part of my Brief Regiſter and Survey of Parliamentary Writs p. 365 to 394. In what Caſes and Things their Juriſdiction and Proceedings have been reſtrain'd and *taken away* ſince theſe Inſtitutes were compiled *by* a ſpecial Act made in the Parliament of 17 *Car.* 1. *cap.* 10. Intituled, An Act for Regulating the Privy Council, and taking away the Star-Chamber Court, the Act itſelf will beſt inform you.

10. 6 *Ann. cap.* 6. *S.* 1. Enacts that *the Queen ſhall have but one Privy Council for the Kingdom of Great-Britain, and ſuch Privy Council ſhall have the ſame Powers as the Privy Council of England had at the Time of the Union, and none other.*

11. 6 *Ann. cap.* 7. *S.* 8. Enacts that *the Privy Council for the Kingdom of Great Britain ſhall not be diſſolved by the Death of her Majeſty, her Heirs or Succeſſors, but ſhall continue ſix Months, unleſs ſooner determined by the Succeſſor.*

Fol. 213.

(B. e.) Queen, [*Conſort of the King.*]

Ie Com. Dig. Roy. B.

1. **THE Queen, Feme of the King,** may inform by her Attorney General in the Chancery by Engliſh Bill, to have a Decree made in the Court of the Queen confirmed. **For tho' ſhe be a Subject yet ſhe hath ſuch Prerogative of the King as that ſhe is his Feme. M. 16. Ja. in Chancery. Sir** *Robert Floyde*'s **Caſe, ruled upon a Demurrer.**

2. 2 E. 1. **Rot. Clauſo Memb.** 13. Conventio inter Reginam, **Feme of the King,** and a common Perſon for the enjoying of certain Land for Years, **and the** Queen fecit Attornatum, **and the other appointed to be in proper Perſon.**

3. 11 E. 1. **Rot. Walliæ Memb.** 1. The King gave a Manor to the Queen **his Feme,** and her Heirs for ever, adeo integre & plene, as J. S. held it. **Other ſuch Grant. Memb.** 3.

King *E.* 4. *gave certain Lands to the Queen his Feme for Term of her Life,* and *ſhe leas'd it for Years*; And ſo it ſeems that ſhe has a Capacity to take of the Grant of the King, and ſhe may leaſe alone without the King; And ſo ſee ſhe is a Perſon exempt. Br. Nonabilitie. pl. 61. cites 7 H. 7. 7. —— It was adjudg'd, that where H. 8. granted a Manor to the Queen his Feme for Life; there the Queen was a ſole Perſon exempt by the Common Law, and *may make Leaſe or Grant without the King*, and ſo may plead and be impleaded alone. 4 Rep. 23. b. Trin. 26 Eliz. in the Caſe of Clark v. Pennifather.

4. 2 E. 1. **Rot. Walliæ Memb.** 2. **The King granted to the Queen his Feme ſuch** Land ad vitam ſuam, ita tamen quod Maneria &c. a Corona Angliæ non ſeparentur.

5. 11 El. 1.

5. 11 E. 1. **Rot. Chart. Memb. 5. The King granted to the Queen** a Manor Habendum ſibi & Hæredibus.

6. 3 E. 1. **Rot. Chart. Memb. 4. In Schedula Annexa.** The Feme of E. 1. was obliged to Robert de Bohun in Mille libris ex Aſſenſu & voluntate Domini Regis **Domini noſtri, and after Inſperimus, and the King confirmed &c.**

7. 9 E. 1. **Rot. Chart. Memb. 4. Pro Johanne Ferrer,** the Queen, Conſors Regis, * granted Manerium dilecto Militi noſtro Domino Johanni Ferrer. * Orig is (Grantera.)

8. 8 E. 1. **Memb. 4. The** Queen by Aſſent and Conſent of the King granted a Manor &c.

9. 10 E. 1. **Rot. Chart. Memb. 3. Part 16. Inſperimus the** Grant of the Queen of the Manor in Fee **Familiari Militi noſtro** Galfrido de Pichford, which had been granted to the Queen and her Heirs by another &c. **The** King confirmed &c.

10. 11 E. 1. **Rot. Chart. Memb. 4. The** King confirmed a Grant which the Queen had made &c. 18 E. 1. **Memb. 11. 20. accordingly of a Grant in Fee by the Queen.**

11. 3 E. 1. **Rot. Pat. Memb. 14. In Schedula annexa. The** King granted all Debts * whatſoever to his Wife. * Orig. is (D'unite la ſa Feme) it ſeems (la) ſhould be (al.)

12. **The** King cannot grant to another for Life the Office of making Saddles for the Queen; **becauſe ſhe is as a Feme ſole, and ſo** may elect own Officers. **Dub. P. 6. Ja. B. between** *Auburcurmill and Cure.*

13. In *Quare Impedit* by the Queen, the Writ *wanted* theſe Words, *Et niſi fecerit.* Thorp ſaid the *Queen* is a Perſon exempt, and *ſhall not be amerced for her Nonſuit*; and therefore ſhe *ſhall not find Pledges de Proſequendo*, and ſhe *ſhall have Writ of Form in all Points as the King ſhall have*; and therefore the Writ was awarded good. Br. Nonability, pl. 59. cites 18 E. 3. 12. & Fitzh. Brief 355. Co. Litt. 133. a. cites S. C.—— S.P. Co. Litt. 127.

14. In Scire facias it was admitted, that the *King may give* to the Queen *certain Portion by his Letters Patents*, by Diviſion certain. And ſo ſee, that the Queen has a Capacity, tho' ſhe be Feme Covert, and may take of her Baron; and this ſeems to be for Term of Life. Br. Nonability, pl. 58. cites 49 E. 3. 4. Br. Preſcription, pl. 12. cites S. C.

15. In *Formedon* the *Tenant vouch'd the Queen and two others, as Heirs of the Duke of York*, and *ſhewed Cauſe by the Duke.* Brian ſaid the Queen is not a Perſon able to be vouch'd as here; for *this is a Real Matter*; but in *Perſonal Cauſes ſhe is exempt*, and has Ability as a Private Perſon, and *may make Gift or Leaſe for Term of her Life:* And therefore by him the Tenant *ſhall have firſt* * *Aid of the King, and after of the Queen, but not of both together.* And it was doubted if the Queen be a private Perſon † *exempted by the Common Law, or by Statute*; for if it be by Statute, it ought to be pleaded; Per Brian; for it is a private Statute. But per Townſend, if ſhe be exempt by the Common Law, the Tenant need not have Aid of the King. Br. Nonability, pl. 56. cites 3 H. 7. 14. * In Caſe of *Aid Prayer* of the Queen, it is *Domina Regina inconſulta*; and the *Cauſe* of the Aid Prayer *ſhall not be counterpleaded* no more than in the Caſe of the King. Co. Litt. 133. b.—— † The Queen Conſort of the King of England is *an exempt Perſon* from the King by the Common Law, *and is of* Ability and *Capacity to Purchaſe and Grant* without the King. Co. Litt. 3. a. —— Per Brian, The Queen is a *Sole Perſon* by the Common Law, but *not to all Intents.* Br. Aid del Roy, pl. 96. cites 3 H. 7. 14.

16. *Suit by Petition* does not lie to the Queen; for *Aſſiſe, Præcipe quod reddat*, and the like *lies againſt her.* Br. Nonability, pl. 60. cites 11 H. 4. 67. Per Cur. Co. Litt. 133. b.

17. *In Quare Impedit* brought by the Queen, ſome ſay that *Plenarty is no Plea* no more than in Caſe of the King. Co. Litt. 133. a.

18. If any Bailiff of the Queen's bring an *Action concerning the Hundred*, he *ſhall ſay In Contemptum Domini Regis & Reginæ.* Co. Litt. 133. a.

19. The Queen ſhall *pay no Toll.* Co. Litt. 133. b.

20. If the *Tenant of the Queen aliens* a certain *Part* of his Tenancy to *one, and* another *Part to another,* the *Queen* * *may diſtrain in any one Part for the whole,* as the King may do; but other Lords ſhall diſtrain but for the Rate; and therefore where the Queen ſo diſtrains, there lies a *Writ de De-onerando pro rata Portione.* Co. Litt. 133. b.

* This ſeems to be miſ-printed, and that it ſhould be, may [not] diſtrein &c. or otherwiſe

here ſeems an Inconſiſtency; and F. N. B. 235. (A) is that the Writ de De-onerando pro rata Portione is awarded to the Queen's Officers where they diſtrain one Tenant for the whole Rent, where he holds but Part of the Lands, and ſeveral other Tenants hold the Reſidue thereof.

21. The Writ of Right ſhall not be directed to the Queen no more than to the King, but to her Bailiff; otherwiſe it is when any other is Lord. Co. Litt. 133. b.

22. A *Protection* ſhall be *allowed againſt* the Queen, but not againſt the King. Co Litt. 133. b.

S. P. Co. Litt. 131. a.

23. The Queen is *not bound by the Statute of Marlebridge* for driving a Diſtreſs into another County. Co. Litt. 133. b.

24. If any do *compaſs the Death of* the Queen, and declare it by any overt Act, the very Intent is *Treaſon* as in the Caſe of the King. Co. Litt. 133. b.

2 Hawk. Pl. C. 423. cap. 44. S. 11.

25. Queen Conſort, in Caſe of Treaſon by her, ſhall be *tried per Pares,* as Queen Anne, the Wife of H. 8. was. Paſch. 28. H. 8. in the Tower of London before the D. of Norfolk then High Steward. 2 Inſt. 50.

26. It was adjudged, that where the Queen was Tenant for Life, and a *Copyhold of Inheritance Eſcheats to her*; there the Queen *may grant it* to whom ſhe pleaſes, and this ſhall bind the King his Heirs and Succeſſors for ever; For ſhe was Domina pro Tempore, and the Cuſtom of the Manor ſhall bind the King. 4 Rep. 23. b. Trin. 26 Eliz. in Caſe of Clark v. Pennifather.

(C. e) * Aurum Reginæ.

* It was reſolved, 1. That this ought to be *Sponte* by the Subject *ſine Coactione*, ſo that this ought to be

1. 15 E. 3. cap. 6. Item, That the Queen's Gold ſhall not run in Demand by reaſon of this Grant. **This was upon the Grant of the 9th. Lamb Fleece and Sheaf by way of Subſidy. Rot. Parl. 15 E. 3. Dorſo N. 60. for a Fifteenth.**

to be at the Pleaſure of the Subject, whether he will offer, or give, or no. And for this all *Fines upon Judgment*, or by Offer or Fine for *Alienation*, or in any other Caſe where the Subject does not do it *Sponte, ſine aliqua coactione*, viz. That the King of right ought to have it, there the Queen ſhall have nothing.

2. It ought to be *Sponte ſine Conſideratione alicujus Reventionis ſeu Intereſſe*, That the King hath in *Eſſe in Jure Coronæ*, and for this upon *Sale or Demiſe of his Lands*, or Wares, *or Goods of Felons, Outlaws, & ſimili Caſu*, for theſe are Contracts and Bargains concerning the Revenues and Intereſts of the King; And it cannot be ſaid in ſuch Caſe, that the Subjects *Sponte ſe obligant*, as to purchaſe or buying any the Revenues or Intereſts which the King has.

3. It ought to be *Sponte ſine Conſiderationem, & non ex mera Gratia & Benevolentia Subditi*; For that which is of mere Grace is not properly ſaid of Obligation or Duty, and the Words of the Records are to have *De iis qui ſponte ſe Obligant*, and ſo it was ordained by the King and his Counſel, as appears by the Record of Hill. 4 E. 1. in Scaccario &c.

4. It ought to be *Sponte ſuper Conſiderationem, quæ non attingat Reventionem ſeu Intereſſe Coronæ* in any Thing which the King has. As if the Subject give to the King *Sponte* a Sum of Money for *Licence in Mortmain, or* for *to create a Tenure of himſelf* to have a *Fair, Market, Park, Chaſe, or Warren, within his Manor*, there the Queen ſhall have it; For the Subject did this *Sponte*, and was not conſtrained to it. And this does not concern any Revenue or Intereſt of the King. *But if the King has a Fair* or Market, or Park, or Warren, *and grants it for a Sum of Money*, there the Queen ſhall have nothing; For this was a Thing *in Eſſe*, and Parcel of the Revenue of the Crown; And by that it appears, that for as much as little or nothing is given in ſuch Caſe where this of right is due, this is not now of any ſuch Value as was pretended. And this Reſolution was reported to our Sovereign Lord the King by Popham, in the Gallery at *Whitehall*. 12 Rep 21. Paſch. 4 Jac.

2. 31 E. 3. cap. 13. **The Commons grant a Fifteenth to the King,** and our Sovereign Lord the King hath granted to the ſaid Commons, That the ſaid Quinzim [being] ſo granted, no Gold ſhall be demanded nor levied to the Uſe of the Queen, but that the ſaid Commons ſhall be thereof wholly diſcharged. Fol. 214.

(D. e) * Monopolies.

* A Monopoly *is an* Inſtitution, or *Allowance* by the King by his Grant, Commiſſion, or otherwiſe, *to any Perſon* or Perſons, *Bodies Politick or Corporate* of or *for the ſole Buying, Selling*, Making, Working, or Uſing of any Thing, whereby any Perſon or Perſons, Bodies Politick or Corporate are ſought to be reſtrained of any Freedom, or Liberty that they had before, or hindered in their lawful Trade. 3 Inſt. 181. cap. 85.——Hawk. Pl C. 231. cap. 79. S. 1.——The *Difference between Monopoly and Engroſſing* is, the one is by Patent from the King, the other is by Act of the Subject between Party and Party. Arg. Skin. 169. Paſch. 36 Car. 2. B. R. in Caſe of the Eaſt India Company v. Sandys.

1. **Rot. Parl. 1. H. 5. N. 41. The Commons pray, That** all Merchants may export to any Place abroad, or import from any Place any Goods, (except thoſe of the Staple) **at their Pleaſure, paying the Cuſtoms and other Duties due to you, any Proclamation to the contrary notwithſtanding &c. Anſwer. The King will be adviſed by his Council.**

2. Monopolies *are againſt the* ancient and *fundamental Laws of the Realm.* 3 Inſt. 181. cap. 85.——Generally all Monopolies are againſt *Magna Charta*, becauſe they are againſt the *Liberty and Freedom of the Subject* and the Law of the Land. 2 Inſt. 47.

(D. e. 2) Monopolies *as to Printing*, and of *Suits relating thereunto.*

1. THE Patent for Printing *Law Books*, derived down to Col. Atkins, was to Print *all Law Books that concern the Common Law*, wherein No-body elſe has an eſpecial Privilege granted under the Great Seal of England. Afterwards an Agreement was made, in Purſuance of this Patent, with the Stationers, which was, That the Stationers ſhould no longer Print Law Books, without the Aſſent of Col. Atkins. In arguing the Caſe of Printing Roll's Abridgment, being Licenced by the Judges, it was inſiſted and admitted by the Counſel of the Patentee in Parliament 1. That this Grant is no publick Grievance. 2. That the ſtopping the Impreſſion, tho licenced by the Judges is juſtifiable. 3. That the *Law Patentees may not Print Law Books without the Judges Licence.* 4. That an Injunction out of Chancery againſt Printing ſuch Book is Juſt and Right. The Words of the Act of 14 *Car.* 2. 33. whereby the Licencing of Books is enacted, ſay, That *no Man ſhall Print a Book till it be licenced.* Therefore there are two Things in this Clauſe. 1. That no Man can Print a Book till it be licenced. 2. *The Licence muſt purſue this Act of Parliament.* If I bring a Book to the *Licencer*, and he *will not* [*licence it*] I have *no Remedy*, not ſo much as an Action upon the Caſe, *only a Recourſe to the King to make Complaint.* So that although this Abridgment be *licenced by the Judges, yet if* in Truth it be *not licenced by the King to Print it*, though the Book may well be Printed by Him that has Authority, yet he that has No Authority cannot. It is one Thing to licence a Book, by ſaying, *This Book is fit for Publick View*; And another Thing to ſay, *This Book thus licenced ſhall be*

be Printed by any that can get it into his Hands. *Licence to Print*, goes to the Bookſeller or Printer; *Licenſe to be Printed*, goes to the King. Cart. 89. Mich. 18 Car. 2. in Parliament. The Stationers v. the Patentees about Printing Roll's Abridgment.

S. C. cited Skin. 234. Paſch. 1 Jac. 2. B. R. in Caſe of the Company of Stationers v. Parker. —— But Ibid. 236. the Court ſaid, they thought it a hard Caſe.

2. The Company of Stationers brought an Action againſt S. for Printing Gadbury's Almanack without their Leave. Upon a Special Verdict found, the Queſtion was, Whether the Letter Patents granted to the Company for the ſole Printing of Almanacks were good or not? The Court ſaid, That *Almanacks might be accounted Prerogative Copies, and* without Doubt, this *might be granted* by the King, and accordingly gave Judgment for the Plaintiffs, Niſi Cauſa &c. 3 Mod. 256. Trin. 29 Car. 2. C. B. The Company of Stationers v. Seymore.

——A Queſtion was, Whether the Grant of the Crown to the Company of Stationers to have the *ſole Printing of Almanacks*, provided they were licenſed by the Archbiſhop of Canterbury, and Biſhop of London, were a good Grant, or void, becauſe againſt the Liberty of the Subjects? It was argued in Favour of the Patent, that ſince the Art of *Printing* was found out, it has been more under the Care of the Crown than any other Art whatſoever. 1ſt. Becauſe it was an Art introduced by the Care of the Crown; ſo ſaid in **Carter's** Caſe, which gave the Crown a *Property* in the Trade. 2dly, Becauſe of the *Greatneſs of the Inconvenience*, that may redound to the Publick, from the Miſmanagement of the Preſs. In Cart. Rep. 89. the Controverſy was about the Printing *Rolle's Abridgment*, and was decreed in Chancery in Favour of the Patentees, and Decree confirmed in the Houſe of Lords. Mich. 24 Car. 2. the Queſtion was, about the Patent for ſole Printing of all *Law Books*; Judgment againſt the Patentee in B. R. for the *Uncertainty of what ſhall be eſteemed a Law Book*; but this Judgment was reverſed in the Houſe of Lords. 1 Mod. 256. **Seymour's** Caſe full in Point, the ſame Objections made as here. In 34 Car. 2. **Company of Stationers v. Skinner**, Patent allowed for *Primmers*, *Pſalters*, *Pſalms*, and *Almanacks*. 34 Car. 2. in Chancery, **Company of Stationers v. John Gale**; No Decree, indeed, for Printing Pſalms, Pſalters, and Almanacks; But the Reaſon was, becauſe the Perſon controverting the Patent, ſubmitted without. 25 Jan. 34 Car. 2. **Stationer's Company v. Wright**; Patent for Printing *Pſalms* allowed. Mich. 33 Car. 2 **Stationer's Company v. Lee**, Another Patent for Pſalms. Trin. 12 W. 3. **Stationers Company v.** ..... Patent for Almanacks. In Stat. 9 Annæ, this very Patent now in Queſtion was taken Notice of. And per Cur. the Patent for ſole Printing of Law Books is not now to be ſhaken, having had the Sanction of the Houſe of Lords. Monopolies are odious; this Caſe is therefore to be diſtinguiſhed, by deriving to the Crown ſome ſpecial Intereſt in Almanacks. No Opinion was given; but to be ſpoken to again. 10 Mod. 106, 107. Mich. 11 Ann. B. R. in Caſe of Company of Stationers v. .....

S. P. 2 Chan. Caſes 76. Mich. 33 Car. 2. The Company of Stationer's Caſe. —— 2 Chan. Caſes 93. Paſch. 34 Car. 2. S. C.

3. An *Injunction* was granted *to ſtay* the *Selling of* ſome *Books imported from Holland* &c. the ſole Printing whereof belonged to the Company of Stationers. 2 Show. 258. to 261. Hill. 34 & 35 Car. 2. the Company of Stationers v. Lee.

4. King Charles II. granted to the Plaintiff the *ſole Printing of Blank Writs, Bonds, and Indentures, for* the Space of 30 *Years*. The Defendant was a Stationer, and the *Company of Stationers had* conſtantly *for* the Space of 40 *Years* laſt paſt, *before this Grant, printed Blank Bonds*, the Queſtion was, Whether this Grant was good excluſive of all others? The Court ſaid, That the King had a Prerogative to grant the ſole Printing to a particular Perſon; but inclined, that the Patent was not good. 3 Mod. 75. Paſch. 1 Jac. 2. B. R. Earl of Yarmouth v. Darrel.

5. King Charles I. grants to the Univerſity of Oxon, Power *to Print tam Libros content. in the Charter granted by King James to the Stationers* of London *Quam alios non prohibitos*. In an Action brought againſt P. by the Stationers of London, he pleads theſe Letters Patents of Car. I. The Court inclined for the Defendant, for this is a *Prerogative* of Power *annexed to the Perſon* of the King, *which he could not grant ſo, but that he may reſume; otherwiſe* it is of the Grants *of an Intereſt*; but Adviſare vult. Skin. 233 to 236. Paſch. 1 Jac. 2. B. R. Company of Stationers v. Parker.

6. In 8 Ch. I. there was a *Patent granted to the Univerſity of Oxford to Print Bibles* and other Books not prohibited. 30 May, 8 Car. the Patent is confirmed, and limits that there ſhall be but two Preſſes and three

Printers

Printers. The Plaintiffs claim as the King's Printers under ſeveral Patents continued down by meſne Aſſignments, and bring their Bill to reſtrain the Defendants from Printing Bibles &c. The Lord Keeper was of Opinion, That it *was never meant* by the Patent to the Univerſity, *that they ſhould Print more than for their own Uſe*, or at leaſt but ſome ſmall Number more to compenſate their Charge; but as they now manage it, they would ingroſs the whole Profit of Printing to themſelves, and prevent the King's Farmers of the Benefit. However, he ſaid, That the Validity of their Patents was *a Matter proper to be determined at Law*, and the Plaintiffs were now proper only for a Diſcovery, and therefore ordered, that the Plaintiffs ſhould bring an Action at Law in B. R. againſt the Univerſity, or thoſe who claimed under the Univerſity, and that it ſhould be tried at the Bar, and the Defendants were to admit that they had Printed a competent Number of Bibles at the Trial. And tho' the Plaintiffs preſs'd much for *an Injunction* to ſtay the Univerſity Printers, yet the Lord Keeper *refuſed* to grant it; becauſe, if it ſhould be found for them, they would receive a Prejudice which he could not compenſate, nor make good to them. 2 Vern. 275. Mich. 1684. Hills & al. v. the Univerſity of Oxford & al.

7. Serjeant Hawkins ſays, It ſeems to be the better Opinion, That the King may grant to particular Perſons the ſole Uſe of ſome particular Imployment, as of Printing the Holy Scriptures, and Law Books &c. whereof an unreſtrained Liberty would be of dangerous Conſequence. Hawk. Pl. C. 231. S. 6.

4 R. S. L. 243. ſays, That neither the Serjeant's Authorities, which are Mod 256. 3 Keb. 792. [Trin. 29 Car. 2. B. R. The Stationer's Company v. Seymour] & 3 Mod. 75. [Paſch. 1 Jac. 2. Earl of Yarmouth v. Darrel.] nor his Reaſons ſeem to carry any great Weight with them; That as to the Caſe of the **Company of Stationers v. Seymour**, which is moſt to his Purpoſe, the Action was brought againſt Seymour, for printing an Almanack, which was there held to be the proper Copy of the Company of Stationers only with ſome trifling Additions concerning the Weather &c. Beſides, the Act of 13 and 14 Car. 2. againſt Printing without Licence was then in Force; as it was alſo, when that Judgment in the Houſe of Lords, cited in that Caſe, was given againſt one who printed a Law Book, from the Patentee [And after other Things, he ſays] But further, the *Patent for* printing *Law Books as it ſtands* at this Day, *does not at all prevent the Inconveniencies* Mr. Hawkins would redreſs; For theſe Books are never peruſed by any of the Learned before they are put to the Preſs; and if the *Maxims of Tom Thum, or Doctor Doolittle* came to their Preſs under the Title of Law, I dare undertake, the Patentees would make no Scruple of printing them as ſuch; therefore if it ſhould be admitted to be reaſonable that ſome learned Man of the reſpective Profeſſions of Law, Divinity and Phyſick &c. ought to peruſe every Book before it goes to the Preſs, this is far from being a Reaſon for eſtabliſhing ſuch a Patent as is contended for; If there be any dangerous Conſequences to be apprehended, they muſt ariſe from the Books not being peruſed by a Man of Judgment, appointed by Authority, and not from the Printing them by this or that Man; For let the Book be firſt peruſed, and have the Sanction of an Imprimatur, the Printing will be probably better performed, and the Publick better uſed, where there are ſeveral Shops to go to, than where we are tied up to one; For in this laſt Caſe, whatever Hardſhips, or unfair Dealing we meet with, it may be difficult to find Redreſs.

[As to the Law-Patent, I believe I may confidently affirm, that there is not one Individual Gentleman of Learning in the Profeſſion, but thinks the Patentees have moſt groſly abuſed it, to the great Diſhonour and Diſreputation of the Law, and the great Injury of the Body of its Profeſſors. Whence ariſes the great Diſeſteem entertained by Foreigners of our Laws, but from the many trifling, paltry Books, which the Patentees, from a Plenitude of Power, which they flatter themſelves to be inveſted withall, as well as Want of Modeſty, and decent Regard to their Superiors, and in Defiance and Contempt of the Profeſſion, have from time to time uſhered into the World? And nothing probably can ſecure the Honour and Dignity of our Laws, but putting a Stop to theſe Licentious Practices, by reſtraining the Patentees from publiſhing any Book, within the Compaſs of their Patent, without the Sanction of an Imprimatur; And under ſuch Reſtriction I am inclined to think the Patent may prove not prejudicial to the Publick]

(E. e) *Im what Caſes* it may *be granted. And what is a Monopoly.*

1. A **Monopoly granted to a Man of the** ſole making of Cards within the Realm **is void, and againſt the Common Law and divers Statutes, becauſe it is an Hindrance of Trade. Co.** S. C. argued Noy. 173 to 185. —— 11. S. C. argued *Monop.* and adjudg

ed. 11. Rep. 84. b. to 88. b Trin. 44 Eliz. *Monop.* 86. **See the ſame Caſe argued. Tr. 44. between** *Darcy and Allen.* ——Hawk. Pl.C. 231. cap. 79. S. 5.——Mo. 671. S.C.—— 8 Rep. 125. S. C. cited—2 Inſt. 47.

A Grant to any particular Corporation of the ſole Importation of any Merchandize is void, whether ſuch Merchandize be *prohibited or not*, as being againſt the Freedom of Trade, and diſcouraging Labour and Induſtry, and reſtraining Perſons from getting an honeſt Livelihood by a lawful Employment, and putting it in the Power of particular Perſons, to ſet what Prices they pleaſe, all which are manifeſt Inconveniencies. Hawk. Pl. C. 231. cap. 79. S. 2, 3.

2. **If a** Statute pro bono Publico reſtrains the Importation of divers Manufactures, **becauſe the Subjects ought to apply themſelves to the making of them, now if the** King grants the ſole Importation of them to one or divers (without any Limitation) **notwithſtanding the Act; This is a Monopoly againſt the Common Law, and the Intent of the Statute. Co. 11.** *Monopolies* 88.

3. As **where the Statute of** 3 E. 4. Enacts that none ſhall import any Cards &c. **if the King grants to a Man, that he ſhall import, notwithſtanding the Act; This is a Monopoly, and void by the ſaid Act. Co. 11.** 88.

Hawk. Pl. C. 231. cap. 79. S. 4. ſays it has been reſolved for the like Reaſons as in the Note on pl 2 and 3 above.

4. **If the King grants by Patent** the ſole ingroſſing of Wills and Inventories in the Prerogative Court J. S. **This is a Monopoly, and ſo void; For it takes away the Liberty of the Subject, who may ingroſs it himſelf, or any other whom he pleaſes. At the Parliament of** 18 **and** 19 **Jac. Reſolved in Sir** *Robert Fludd's* **Caſe. And the Patent, adjudged by the Parliament to be a Grievance, and** Sir Robert Fludd put out of the Houſe for a Projector.

Jo. 231. Hill. 6. Car. B. R the S. P. was adjudged. Mounſon v. Lyſter. Hawk. P. C. 231 cap. 79. S. 4.

5. **If the King grants by Patent** the ſole making of Bills, Pleas, and Briefs in the Council of York to J. S. for a certain Fee, **where before the Attorneys uſed to make them, and to have the Fees, by which new Fees are allowed to the Attorneys; This is a void Patent, and a Grievance, For this is a Monopoly; For by the ſame Reaſon, by ſeveral Patents, the ſole making of Bills and Declarations, may be limited to certain Perſons in every Court of Weſtminſter, and ſo Lawyers utterly excluded to make any of them. At the Parliament** 18 **and** 19 **Jac. Reſolved in** *Leipton's* **Caſe, and his Patent adjudged a Grievance; For it is againſt Reaſon that every one ſhall be compelled to ſhew his Evidence to one Man, and upon Croſs Bills he ſhall have the View of the Evidences of both Sides, which is not Reaſon.**

6. In 50. E. 3. John Peachie of London was ſeverely puniſhed for *procuring a Licence* under the Great Seal, *that he only might ſell ſweet Wines* in London. 3. Inſt. 181. cap. 85.

7. King Philip and Queen Mary, by their Letters Patents, granted to the Mayor, Bailiffs, and Burgeſſes of Southampton and their Succeſſors, (for that King Philip firſt landed there) *that no* Wines called *Malmſies*, brought into this Realm from the Parts beyond the Seas by any liege Man or Alien, *ſhould be* diſcharged, *or landed in any other Part* of the Realm, *but* only *at* the ſaid Town and Port of *Southampton*, with a Prohibition, that no Perſon or Perſons ſhall do otherwiſe, *upon Pain to pay treble Cuſtom*; And it was reſolved by all the Judges of England, that this Grant made in Reſtraint of the Landing of the ſame Wines was againſt the Laws and Statutes of this Realm, viz. Magna Charta, 29, 30. 9 E. 3. cap. 1. 14 E. 3. 25 E. 3. cap. 2. 27. & 28 E. 3. Statute of the Staple. 2 R. 2. cap. 1. and others; And alſo that the Aſſeſment of Treble Cuſtom was againſt Law, and merely void; And after at the Parliament holden in Anno 5 Eliz. the Patent, as to Aliens, was by a private Act confirmed by Parliament, and not for Engliſh. 3 Inſt. 182. cap. 85.

Salk. 446. Edgeberry v. Stephens. S. P. —— In ſuch Caſes it is good,

8. The Judges have hitherto *allowed* of Monopoly Patents, *where* any Man *by his own Charge* and Induſtry, or by his own Wit, *or Invention*, doth bring any *new Trade* into the Realm, *or any Engine* tending to the Furtherance of a Trade, *that never was uſed before*; And that *for the Good*

of

of the Realm; That in ſuch Caſes the King may grant him a Monopoly Patent for ſome *reaſonable Time*, until the Subjects may learn the ſame, in conſideration of the Good that he doth bring by his Invention to the Commonwealth; otherwiſe not. Noy 182. Arg. cites 9 El. Haſtings's Caſe.

being indulged for Incouragement of Ingenuity; But the Statute 21 *Jac.* 1. *cap.* 3. S. 6.

reſtrained it to the Term of fourteen Years, it being preſumed, that after that Time, it will be a known Trade. Per Parker Ch. J. Wms's Rep. 183. Hill. 1711. B. R. in the Caſe of Mitchel v. Reynolds.

9. A Patent was granted *for ſole making Friſadoes*, upon Suggeſtion of bringing the Skill of making them into England, and a Forfeiture was was given of the Goods and of 100 l. one Moiety to the King, the other to the Patentee, upon any Offender; Thereupon an Information was exhibited in the Exchequer againſt ſeveral, who demurred, For that it was againſt Law to have ſuch *Penalties of the Goods and* 100 *l.* to be forfeited by Force of Letters Patents. And the Court being of Opinion againſt the Patentee, he exhibited his Engliſh Bill, in the Exchequer Chamber againſt them, where upon the Examination of the Cauſe, it appeared, that ſome Clothiers did *make Baies very like to the Patentee's* Friſadoes; And that they *uſed to make them before the Patentee's Patent*; for which Cauſe they were neither puniſhed nor reſtrained from making their Baies like to his Friſadoes. Noy 182, 183. Haſtings's Caſe.

So where a Patent was granted to A. for the ſole making of *Knives with Bone Hafts, and Plates of Lattin*; Becauſe, as the Patents ſuggeſted, he brought the firſt Uſe thereof from beyond Seas;

yet nevertheleſs, when the Wardens of the Company of Cutlers ſhewed before ſome of the Council, and ſome learned in the Law, that they *uſed to make Knives before, though not with ſuch Hafts*; and that ſuch a *light Difference* or Invention ſhould be no Cauſe to reſtrain them; thereupon he could never have Benefit of this Patent, although he laboured very greatly therein. Noy 113. Mathey's Caſe.

The *Difference* is between a Grant to particular Perſons for the ſole Uſe *of a Trade known*, and a *New-invented Art*, See Wms's Rep. 183. by Lord Ch. J. Parker Hill. 1711. in the Caſe of Mitcel v. Reynolds.—Where the *New Invention*, for which a Patent was granted, is only a Varying in the Form of making it, and not in Subſtance, the Patent was adjudged void. Arg. 2 Brownl. 114. Mich. 9 Jac. in the Caſe of Croſs v. Weſtwood, Cites the Caſe of Haſtings and Johnſon.

10. If a Man has brought in a *New Invention*, *or* a new *Trade*, within the Kingdom, *in Peril of his Life, and Conſumption of his Eſtate* or Stock &c. *Or* if a Man has *made a new Diſcovery* of any thing, In ſuch Caſes the King, of his Grace and Favour, in Recompenſe of his Coſts and Travail, may grant by Charter to him, That he only ſhall uſe ſuch a Trade, or Traffick, for a certain Time; Becauſe at firſt the People of the Kingdom are ignorant, or have not the Knowledge or Skill to uſe it; But when that Patent is expired, the King cannot make a new Grant thereof; For when the Trade is become common, and others have been bound Apprentices in the ſame Trade, there is no Reaſon that ſuch ſhould be forbidden to uſe it. Godb. 254. pl. 351. Paſch. 12 Jac. B. R. in the Caſe of Cloathworkers of Ipſwich.

Roll. Rep. 4, 5. in the Taylors of Ipſwich and Sherring.

11. A Patent for *Greenland* is good, becauſe it was found at great Peril of the Life of the firſt Finder. Arg. Roll. R. 5. in the Caſe of the Taylors of Ipſwich v. Sherring.

12. The Patent to the *College of Phyſicians*, that none practiſe Phyſick, but ſuch as are allowed by them, had not been good, if not confirmed by Act of Parliament. Per Croke J. and agreed to by Coke Ch. J. Roll. R. 5. in the Taylors of Ipſwich Caſe.

13. 21 *Jac* 1. *cap.* 3. *S.* 1. Enacts, That *all Monopolies, Commiſſions, Grants, Licence, Charters, and Letters Patents, granted to any Perſons, Bodies Politick, or Corporate, for the* * *ſole Buying, Selling, Making, Working, or Uſing of* ‡ *any Thing within this Realm, or of any other Monopolies, or Power, or Liberty, to diſpenſe with any others, or to give Licence to do, uſe, or exerciſe any thing againſt the Tenor of any Law or Statute, or to give any Warrant for ſuch Diſpenſation or Licence; or to agree or compound with any others for any Penalty limited by any Statute, or of any Grant of the Benefit of any Forfeiture, or any Sum of Money, that ſhall be due by any Statute before Judgment thereupon had; And all Proclamations, Inhibitions, Reſtraints, Warrants*

This Act is forcibly and vehemently penned for the ſuppreſſing all Monopolies; for Monopolies in Times paſt were ever without Law but never

without Friends. 3 Inſt. 182.

rants of Aſſiſtance, and all other Matters and Things whatſoever, tending to to the Inſtituting, Erecting, or Furthering the ſame, ſhall be void.

cap. 85.—— *This Word [*Sole*] is to be applied to five ſeveral Things, viz. Buying, Selling, Making Working, and Uſing, four of which are ſpecial, and the laſt, viz. (ſole uſing) is ſo general, as no Monopoly can be raiſed, but ſhall be within the Reach of this Statute; and yet for more Surety theſe Words (or of ony other Monopolies) are added, and by reaſon of theſe Words [ſole uſing] divers Proviſions are made by this Acts as hereafter ſhall appear. 3 Inſt. 182. cap. 85.

‡ As the Words before are general, ſo theſe Words (of any thing) are of a large Extent, and this Word cauſeth ſome Exceptions hereafter to be made, whereof we ſhall ſpeak in their proper Place. 3 Inſt. 282. cap. 85.

S. 3. All Perſons ſhall be diſabled to have any Monopoly, or any ſuch Grants as aforeſaid.

*Such a Privilege as is conſonant to Law muſt be ſubſtantially and eſſentially newly

S. 5. Letters Patents of new Manufactures heretofore granted for twenty-one Years *or under, to the Inventors thereof, where they are not* * *contrary to Law, or any way* † *prejudicial to the Commonwealth, are ſaved, ſo alſo are ſuch as have been heretofore granted, for more than twenty-one Years, good for twenty-one Years from the Date of their Patent, notwithſtanding this Statute.*

invented; But if the *Subſtance was in Eſſe before, and a new Addition thereunto,* though that Addition make the former more profitable, yet it is not a new Manufacture in Law; And ſo it was reſolved in the Exchequer-Chamber Paſch. 15 Eliz. in **Bircott's Caſe** for a Privilege concerning Preparing and Melting of the Lead Ore; And there it was alſo reſolved, That if the new Manufacture be ſubſtantially invented according to Law, yet no old Manufacture in Uſe can be prohibited. 3 Inſt. 184.——Hawk. Pl. C 233. cap. 79. S. 15, 16, 17.

† It may be miſchievous to the State, by raiſing of Prices of Commodities at home. In every ſuch new Manufacture that deſerves a Privilege, there muſt be *Urgens Neceſſitas, & Evidens Utilitas*; Neither muſt it be *to the Hurt of Trade*, nor *generally Inconvenient*; There was a new Invention found out heretofore, that Bonnets and Caps might be thickened in a ‡ *Fulling Mill, by which means more might be thickened in one Day, than by the Labours of* 80 *Men, who got their Living by it*; It was ordained, That Bonnets and Caps ſhould he thickened and fulled by the Strength of Men, and not in a Fulling Mill; For it was held inconvenient to turn ſo many labouring Men to Idleneſs; If any of theſe Qualities fail, the Privilege is declared void by this Act, and yet this Act, though they have all theſe Properties, ſets Monopolies in no better Caſe than they were before this Act, 3 Inſt. 184.— ‡[So a Mill for ſawing of Timber &c. erected in or near Southwark was ordered to be demoliſhed for the like Reaſon many Years ſince; And for the like Reaſon, Printing is ſaid to have been prohibited in the Turkiſh Empire.]

* The Cauſe wherefore the Privileges of new Manufactures, either

*S. 6. Neither ſhall this Act extend to Grants of * New Manufactures hereafter to be made to the Inventors thereof for* 14 *Years or under, being not contrary to Law, or prejudicial to the Commonwealth,* † *nor to Grants heretofore confirmed by Act of Parliament, ſo long as ſuch Acts continue in Force.*

before this Act granted, or which after this Act ſhould be granted, having theſe ſeven Properties were declared to be good, was, for that the Reaſon, wherefore ſuch a Privilege is good in Law, is, becauſe the Inventor bringeth to and for the Commonwealth a new Manufacture of his Invention, Coſts and Damages; and therefore it is Reaſon, that he ſhould have a Privilege for his Reward (and for the Incouragement of others in the like) for a convenient Time; But it was thought that the Time limited by this Act were too long for the private, before the Commonwealth ſhould be Partaker thereof, and ſuch as ſerved ſuch privileged Perſons by the Space of ſeven *Years in making and working* of the new Manufacture (which is the Time limited by Law of Apprenticehood) muſt be Apprentices or Servants ſtill, during the Reſidue of the Privilege, by means whereof ſuch Numbers of Men would not apply themſelves thereto, as ſhould be requiſite for the Commonwealth, after the Privilege ended; And this was the true Cauſe, wherefore both for the Time paſt, and for the Time to come, they were left of ſuch Force, as they were before the making of this Act. 3 Inſt. 184.

A Grant of a Monopoly may be to the firſt Inventor by 21 Jac. And if the *Invention be new in England, tho'* the Thing was *practiſed before beyond Sea*; (For the Statute ſpeaks of new Manufactures within this Realm) So that if it be new here, it is within this Statute; Becauſe the Act intended to incourage new Devices uſeful to the Kingdom, and whether learned by Travel or by Study, it is the ſame Thing. 2 Salk 447. ſays it was agreed by Holt and Pollexfen, in the Caſe of Edgebury b. Stephens.

† This was added, For that the City of London, and other Cites and Boroughs &c. have ſome Privileges for buying, Selling &c. by Acts of Parliament; For Example, the Statute of 1 & 2 Ph. & Mar. giveth a Privilege to Cities, Boroughs, Towns Corporate, and Market Towns, for the Sale by Retail of certain Wares and Merchandizes, and ſome other Acts of Parliament in the like Caſe; All which do prove, that ſuch Privileges could not be granted by Letters Patents. But ſpecially this Clauſe was added in reſpect of the Generality of theſe Words (ſole uſing) 3 Inſt. 184, 185.

By this Proviſo, not only the

S. 9. This Act ſhall not be prejudicial to London, or any other Corporation, for any Grant made them concerning their Cuſtoms; nor any Corporation,

Com-

Company, or Fellowſhip of any Art, Trade, or Miſtery, nor to any Company or Society of Merchants, for the ordering of any Trade. Grants, Charters, and Letters Patents, to any City or Town Corporate &c. But alſo the Cuſtoms uſed within the ſame, are excepted out of this Act, which ſeemeth to be more than needed, becauſe the firſt Clauſe of the Purvieu of the Act doth extend but to Commiſſions, Grants, Licenſes, Charters, and Letters patents. 3 Inſt. 185.

S. 10. *Neither ſhall it extend to any Grant of Privilege for Printing, Digging, or Making or Compounding of Salt Petre, of Gunpowder, or Caſting, or making of Ordnance, or Shot for Ordnance, nor to any Grant of any Office now in Being, other than ſuch as are decried by the King's Proclamation.* So as to the Thing by this Branch excepted, four Things are required. 1ſt. That it be an Office, This extendeth only to lawful Offices for divers Cauſes. 1. It was neceſſary to except lawful Offices

S. 11. *Nor to any Privilege of Digging, or Making of Allom.*

S. 12. *Nor to the Liberties of Newcaſtle concerning Sea Coals, nor to Licenſing of Taverns, ſo as the King receive the Benefit.*

S. 13. *Nor to the Patent granted to Sir Robert Mansfield for making of Glaſs, nor to that granted to James Maxwell Eſq; for Tranſportation of Calves-skins.*

S. 14. *Nor that of Abraham Baker, for making of Smalt; Nor to that of Edward Lord Dudley, for melting of Iron Ewer, and making the ſame into Caſt Works or Bars, with Sea or Pit Coals.*

in reſpect of theſe Words [ſole uſing] 2. Offices are Duties, ſo called, to put the Officer in mind of his Duty. 3. That which is void and againſt Law, is no Duty, unleſs it be Not to uſe them. 4. Such as are erected againſt Law are Monopolies and Oppreſſions of the People, and no Offices. 5. In Acts of Parliament, Lawful Offices are intended, as in like Caſes has been often adjudged; Therefore unlawful Offices are all taken away by this Act, and lawful Offices remain and continue; ſecondly, That it be an Office heretofore erected; By this Act the Erection of all new Offices, which were not erected before this Act, are wholly taken away. Thirdly, That it be now in Being, and put in Execution. Tho' the Office was erected before this Act, yet if it were not in Being, and put in Execution, the 19th Day of February, in the 21ſt Year of the Reign of King James (at which Time this Parliament begun) it is clearly taken away by this Act. Fourthly, That it be ſuch an Office as hath not been decried, that is (for ſo is the Record of Parliament, and not (decreed) as it is in the printed Book) by any of his Majeſty's Proclamations; For all ſuch Offices as be decried, that is, either forbidden or prohibited by any of his Majeſty's Proclamations, or where the Party grieved is left to his Remedy at the Common Law by any Proclamation, they be alſo decried; for being contrary to the Laws of this Realm, as it is declared and enacted by this Act, they are alſo decried with a Witneſs, and can never be granted hereafter; The fifth Proviſo, concerning the Making of * Allom, or Allom Mines, needed not; for they belong to the Subject in whoſe Ground ſoever the Ore is; And therefore any Privilege thereof cannot be granted, but in the King's own Ground. The ſixth Proviſo concerns the Hoſtmen of New-caſtle &c. This Clauſe was inſerted in reſpect of theſe Words (ſole uſing) The reſt of the Proviſoes concern particular Perſons, and do exempt and except certain ſuppoſed Privileges out of the Purvieu and Penalty of the Law, but leaveth them of like Force and Effect, as they were before the making of it; but it is to be obſerved, that all the Proviſoes, after the ſixth, extend only to the ſuppoſed Privileges therein particularly mentioned, already granted, and not to any to be granted hereafter. 3 Inſt. 185.—— * Hawk. Pl. C. 234. cap. 79. S. 23.

14. In Treſpaſs for ſeiſing a Ship &c. whereby the Plaintiff loſt his Voyage, the Defendant juſtified under the *Canary Patent* granted by the King to ſuch Perſons *to have the ſole Trade*; But the Plaintiff had Judgment; For the King cannot grant that the Subjects Goods ſhall be forfeited for doing a Thing prohibited by Patent. Sid. 441. Hill. 21, & 22 Car. 2. Horn v. Ivy.

15. It has been often reſolved, That *Cuſtom may create* a Monopoly, as the Caſe in the Regiſter is, that none ſhould exerciſe the Trade of a Dyer in Rippon without the Archbiſhop of York's Licence. Vent. 196. Paſch 24 Car. 2. in the Caſe of Broadnox. S. C cited by Ld. Ch J. Parker. Wms's. Rep. 184 in Caſe of Mitchel v. Reynolds. —— S. C. cited 1 Le. 143. 199. in Caſe of Sir George Farmer v. Brook.——S. C. cited Ow. 67 in Caſe of Sir George Farmer v. Brook.

16. The Eaſt-India Company brought a Bill in Chancery, ſetting forth their Letters Patents, and the great Charges they were at in making Leagues with Princes, and building Forts, and maintaining Forces in India; and the Defendants having traded thither, the Plaintiffs prayed a Diſcovery what the Defendants had traded for, and that they might be compell'd to bear a proportionable Part of the ſaid Charge. The Defendants pleaded, anſwered and demurr'd: They pleaded *that they were Free Merchants, and ſet forth the Statute of* 21 *Jac.* againſt reſtraining S. P. in Caſe of Eaſt-India Company v. Sandys. Vern. 130. Hill. 1682. Lord K. North took Notice of an Objec-

tion that this Patent was a Monopoly, and ſaid that if it be now reduced into fewer Hands, and ſo become a Monopoly, it is hard to ſay when it became ſuch; and compared it to the Nuſance of the Buildings in London; there no one can ſay when it became ſo, or which particular Houſe firſt made it ſuch. And ſaid that it is to be obſerved, that the Words of the Statute of Monopolies are, That there ſhall be no Monopoly within this Kingdom; and ſaid that what Influence that might have on this Caſe, was worthy Conſideration.

reſtraining Trade, *and* 9 *E.* 3. *that Merchants might trade any where not in Enmity with the King; and averr'd the Indians were not in Enmity.* Lord K. North held, that this was only a Charter for Regulating Trade, and that there had been many Patents for that Purpoſe ſoon after the making of the Statute of 21 Jac. which had never been thought illegal, nor complained of in any ſubſequent Parliament, and therefore over-ruled the Plea and Demurrer, and ordered the Defendants to anſwer the Plaintiff's Bill. Vern. 305. pl. 300. Hill. 1684. Eaſt-India Company v. Evans & al.

17. In a ſpecial Action on the Caſe the Plaintiffs declared, that in the Reign of H. 4. there was a Society of Merchants-Adventurers in England, and that afterwards Queen Elizabeth did *incorporate* them by Name of *The Governor and Company of the Merchants Adventurers* &c. with *Privilege to trade to Holland*, Zealand, Brabant, Flanders &c. *prohibiting all others* not free of that Company &c. and that the Defendant, not being free of the ſaid Company, did trade there without their Authority, and imported Goods from thence Ad damnum &c. The *Defendant pleaded the Statute of Ed.* 3. that the Seas ſhall be open to all Merchants to paſs with their Merchandize whether they pleaſe; and upon *Demurrer* to the Plea, the Queſtion was, Whether the King had a Prerogative to reſtrain his Subjects from trading to particular Places? See the Arguments on both Sides; but it does not appear that any Judgment or Opinion of the Court was given. 3 Mod. 126. Trin. 2 Jac. 2. B. R. The Company of Merchants-Adventurers v. Rebow.

18. In Trover of a Ship, the Jury found, That Cha. 2. granted to the African Company *all the Regions, Countries &c. from Sally* incluſive *to Cape of Good Hope* incluſive, *with all Iſlands near adjoining to thoſe Coaſts &c. and all Ports &c.* to hold to them and their Succeſſors *for* 1000 *Years, with Licence for them and no others, to ſend Ships &c. and to have all Mines of Gold and Silver there &c. and the intire and only Liberty to trade there*, any Law or Statute to the contrary notwithſtanding, and prohibiting any to trade there, unleſs by Licence firſt had, under Pain of Impriſonment during Pleaſure, and the Forfeiture of Ships and Goods &c. with Power to ſearch and ſeize &c. one Moiety to the King, and the other to the Company; and erected a Court of Judicature for Hearing and Determining all Caſes of Forfeiture and Seiſure for trading thither. The Company by Virtue of this Grant authoris'd certain Perſons to ſeize the Ships &c. of ſuch as ſhould trade in an Infidel Country within the Limits of that Company. Accordingly the Defendants ſeiz'd the Plaintiff's Ship and Goods, and at the Defendant's Inſtance there was a Proceſs in the Admiralty againſt the ſaid Ship; and none appearing for her there, ſhe was condemned; but whether the Defendant be guilty, the Jury ſay they know not, Et ſi &c. pro Quer. Damages to 4300 l. and Coſts to 2 l. 3 s. 4 d. Et ſi pro Defend &c. This ſpecial Verdict was obtained at the Importunity of their Majeſty's Counſel for the Defendant. It was adjudged for the Plaintiff by the whole Court. Show. 135 to 145. Hill. 1 W. & M. (where is a long Argument prepared by the Reporter) Nightingale v. Bridges.

19. 2 *W. & M. S.* 2. *cap.* 9. Enacts that *Letters Patents for the ſole Making of Brandy or Spirits from Malted Corn &c. as a new Invention, are declared void.*

See Millar v. Taylor 4. Burr. 2303.
Stationers' Comp.ª v. Carnan 2. Blackst. Rep. 1004.

(E. e. 2) Monopolies. Tried where, and How.

1. 21 *Jac.* 1. *cap.* 3. *S.* 2. ENacts, that *all Commiſſions, Grants, Licences, Charters, Letters Patents, Proclamations, Inhibitions, Reſtraints, Warrants of Aſſiſtance, and other Matters and Things tending to a Monopoly, ſhall be examined, heard, tried and determined by, and according to the Common Laws of the Realm, and not otherwiſe.*

This Act having declared againſt all Monopolies &c. to be void by the Common Law, hath provided by this Clauſe, that they ſhall be Examined, Heard, Tried and Determined in the Courts of the Common Law, according to the Common Law, and * not at the Council-Table, Star-Chamber, Chancery, Exchequer-Chamber, or any other Court of like Nature, but only according to the Common Laws of this Realm, with Words Negative, (and not otherwiſe;) for ſuch Boldneſs the Monopoliſts took, that often at the Council-Table, Star Chamber, Chancery, and Exchequer-Chamber, Petitions, Informations and Bills were preferr'd in the Star-Chamber &c. pretending a Contempt for not obeying the Commandments and Clauſes of the ſaid Grants of Monopolies, and of the Proclamations &c. concerning the ſame; for the preventing of which Miſchief this Branch was added. 3 Inſt. 182. 183. cap. 85.—* Hawk. Pl. C. 232. cap. 79. S. 11.

(E. e. 3) Judgment. And recovered, what.

1. 21 *Jac.* 1. *cap.* 3. *S.* 4. ENacts, That *the Party grieved by Pretext of any of the Matters or Things aforeſaid, ſhall recover (in one of the Courts at Weſtminſter) treble Damages and double Coſts; in which Suit no Eſſoin or other Delay ſhall be allowed, nor any more than one Imparlance.*

By this Branch theſe Things are provided and enacted, 1ſt, Remedy is given to the Party grieved at the Common Law by Action or Actions to be grounded upon this Statute. 2dly. This Remedy may be had * in the Court of the King's Bench, Common Pleas and Exchequer, or any of them at the Election of the Party grieved. 3dly. The Party grieved ſhall recover treble Damages and double Coſts. 4thly. No Eſſoign, Protection, Wager of Law, Aid Prayer, Privilege, Injunction, or Order of Reſtraint, to be allowed in any ſuch Action. By [Aid Prayer] is intended as well the Writ De Domino Rege inconſulto, as the uſual Form of Aid Prayer; for both are to one End, and (Order of Reſtraint) was added for the Council-Table, Star-Chamber, Chancery, Exchequer-Chamber, and the like. 3 Inſt. 183. cap. 85.—* Hawk. Pl. C. 232. cap 79. S. 13.

S. 4. *If any Perſon or Perſons ſhall, after Notice given &c. cauſe or procure any ſuch Action to be ſtayed or delayed before Judgment, by Colour or Means of any Order, Warrant, Power, or Authority, ſave only of the Court wherein ſuch Action ſhall be brought and depending, the Perſon or Perſons ſo offending ſhall incur the Danger of Premunire &c.*

This Clauſe extends to the Privy-Council, Star Chamber, Chancery, Exchequer-Chamber, and the like; and likewiſe to thoſe that ſhall procure any Warrant &c. from the King &c. And ſo it was reſolved by a Committee of both Houſes before this Bill paſs'd; but it extendeth not to the Judges of the Court before whom any ſuch Action ſhall be brought; For before Judgments, Days muſt be given by Orders of Court &c. 3 Inſt. 183. cap. 85.

S. 4. *Or after Judgment had upon ſuch Action ſhall cauſe or procure Execution of, or upon any ſuch Judgment to be ſtayed by Colour or Means of any Order, Warrant, Power or Authority, ſave only by Writ of Error, or Attaint, the Perſon or Perſons ſo offending ſhall incur the Danger of Premunire &c.*

This Clauſe is more general than the former, being the fifth Clauſe, for this extendeth alſo to the Judges of the Court where the Action is brought or depending, if any Stay or Delay be uſed by them after Judgment; and ſo it was reſolved as is aforeſaid. 3 Inſt. 183. cap. 85. —Hawk. Pl. C. 232. cap. 79. S. 13.

Fol. 215.

(F. e.) *Intruder. In what Caſes* a Man ſhall be *ſaid* an Intruder.

1. WHERE the Determination of the Leaſe appears of Record, the Reverſion being in the King, the Leſſee ſhall be an Intruder by continuing of the Poſſeſſion after. M. 32. 33. El. B. R. Per Manwood.

S.P. Hard. 25. Arg. cites 35 H. 6. & Br. Coron. 188.

2. If a Leſſee for Years of the King holds over his Term, he is not a Tenant at Sufferance, but an Intruder. M. 32. 33. El. B. R. Per Manwood. Agreed.

See (H. b) pl. 1. S. C.— Mo. 295. S. C.

3. If the King leaſes for Years rendering Rent at the Exchequer, or to his Receiver, upon Condition for Nonpayment, that his Eſtate ſhall be void, and the Leſſee doth not pay the Rent at the Day by which his Eſtate is void, If he continues his Poſſeſſion of the Land after, yet he is not any Intruder till Office found, but is only Bailiff de ſon Tort, becauſe it does not appear of Record that his Eſtate is determined; for he might pay the Rent in Pais to the Hands of the Receiver. M. 32. 33. El. B. R. Per Manwood, in Sir *Moyle Finch's* Caſe.

4. But if the King leaſe for Years upon Condition that if the Leſſee does not ſurrender, the Leaſe ſhall be void, If he does not ſurrender at the Time by which his Leaſe is void, he ſhall be an Intruder before Office found; becauſe the Forfeiture appears of Record. M. 32. 33. El. B. R. Per Manwood.

5. Where the *King grants the Cuſtody of Land and Heir of a Ward*, and a *Stranger enters*, This is an Intruſion upon the Poſſeſſion of the King; for he remains in Poſſeſſion, and ſhall make Livery at full Age. *Contra of Entry upon Tenant for Term of Life, the Reverſion to the King*; for the *one has Franktenement*, and may have Aſſiſe, and *the other* not, and *has only Chattle*. Br. Intruſion, pl. 12. cites 4 H. 6. 11. Per Cur.

Br. Office devant &c. pl. 25. cites 1 H. 7. 17. S. C.—— *But* where the *Tenant of the King aliens without Licence*, there, if *Office be found* 7 *Years after, he ſhall not render the Profits but from the Time of the Office found*; note the Diverſity, but *ſuch Entry* by Purchaſe *is not* called an *Intruſion but* a *Treſpaſs*; and ſo are the Words of the Pardon thereof, That we pardon the Treſpaſs aforeſaid. Br. Intruſion, pl. 19. cites 33 H. 8.

6. Where Tenant of the King dies, his *Heir may enter till Office be found*; for he *cannot intrude before Office*, which finds the Dying ſeiſed of the Anceſtor; for the *King has no Poſſeſſion before Office*, which finds his Title, but after Office he cannot enter but by Livery of the King; and *upon Office found* for the King of the Dying ſeiſed of the Anceſtor, there *the Heir ſhall anſwer the Profits by him taken* before; for the Office ſhall have *Relation* to the Death for the Profits, but he ſhall not be an Intruder but by Entry after Office. Br. Intruſion, pl. 18. cites 1 H. 7. 18. and M. 26 H. 8. accordingly.

7. If the *King, having no Title by Matter of Record or otherwiſe*, enters upon me, and puts me out, there, if I enter again, my Entry is lawful, and no Intruſion; ſo tho' there be a Record, if the Record gives him no Title. Fin. Law 8vo. 201.

8. The Queen by Letters Patents made a *Leaſe of the Parſonage of D.* for 21 Years; An Information of Intruſion does not lie for *detaining the Tithes* by a Pariſhioner, unleſs they were *ſevered* from the 9 Parts; Per Manwood Ch. B. And per Shute J. The Reaſon is, becauſe the Queen has no Intereſt to ſue for the Tithes during the Years; but the Leſſee may ſue in the Spiritual Court, or in the Court of Pleas by Quo Minus, or, as he ſaid, by Engliſh Bill. But if the Tithes are ſevered, and a Stranger takes them, the Queen may have Information, but not an Aſſize; for ſhe is not out of Poſſeſſion of her Franktenement, and therefore

'tis

tis Intruſion to her, and Treſpaſs to the Party. And as a common Perſon Leſſor may have Aſſiſe on an Ouſter made to the Tenant for Years, ſo may the Queen have Intruſion. Quod Curia conceſſit. Savil. 68. pl. 142. Paſch. 25 Eliz. Anon.

9. The King being ſeiſed of the Manor of Beverly in the County of York, in Fee, in Jure Coronæ, a *Stranger erected a Shop in a vacant Piece of Land of the Manor*, and took the Profit thereof *without paying any Rent* to the Queen for the Shop. The Queen granted the Manor in Fee to the E. of Leiceſter, and he never enter'd into the Shop nor took any Rent thereof. The Occupier of the Shop *died in Poſſeſſion of it, and his Son enter'd.* It ſeem'd to Whiddon, Saunders, Dyer, and Catlin, that this was no Deſcent; but Manwood and Wray, Serjeants, e contra. D. 266. b pl. 10. Mich. 9 & 10 Eliz.

Ib. Marg. S. P. and ſays, That Plowden in his Quæries 381. ſeems of Opinion, that the Intruder by Building has not gain'd any Eſtate in Poſſeſſion.

— Ibid. cites Hill. 31 Eliz. B. R. **Bury** v. **Goodman**, that where A. intruded upon the King, who granted it over to B. and A continued Poſſeſſion, and died ſeiſed; the beſt Opinion was, that this does not take away the Entry of B. For the Court gave Day to Coke, who argu'd that the Entry was toll'd, to ſhew Cauſe why Judgment ſhould not be given againſt him.

10. It was found by Office, that one F. *Tenant of the Queen* in Capite, *died ſeiſed* of the Manor of D. in the County of Eſſex; R. F. *his Heir*, being of full Age, *tender'd his Livery*; but *before it was ſued out he made Feoffment* in Fee, by Deed inroll'd, to J. B. and others, to the Uſe of himſelf for Life, and after of his Feme for Life, with other Limitations over. It was mov'd, If any Fine ſhould be paid, inaſmuch as the Feoffment ſeem'd to be void. Manwood ſaid, It ſeem'd to him, that a Fine ſhould be paid, and that the Feoffment is good. But Shute, Contra; For here he has intermeddled with the Land before his Livery ſued, which is an Intruſion. But otherwiſe it is of Bargain and Sale by Deed indented and inroll'd, or Fine levid, which is a Barr to the Party and his Heirs. Manwood and Clinch ſaid, There will be a Diverſity between Feoffment and Fine and Deed inroll'd. Quære. Sav. 32. pl. 77. Mich. 24 & 25 Eliz. Frrnks's Caſe.

11. If one intrudes upon the *Poſſeſſion* of the King, *and another enters upon the Intruder*, he ſhan't have *Treſpaſs* for that Entry; for Treſpaſs can't be brought but by one that has Poſſeſſion. But in ſuch Caſe he *has no Poſſeſſion*; for *every Intruder ſhall anſwer to the King for his own Time*, and every Intruſion ſuppoſes the Poſſeſſion to be in the King. Per omnes Juſt. præter Periam. And Rhodes Juſtice ſaid, and cited 19 E. 4. to be, that he can't ſay in an Action of Treſpaſs, *Quare* Clauſum ſuum fregit. 4 Le. 184. pl. 234. Mich. 30 Eliz. C. B. Anon.

Godb 139. pl. 153 S. C. If the *Queen's Leſſee is cuſted by a Stranger*, yet, tho' he is out of Poſſeſſion, he may aſſign over his Term. For the Reverſion being in the Queen, he cannot be out of Poſſeſſion but at his Pleaſure. Cro. E. 275. Wingate v. Mark.

(F. e. 2) Statutes relating to Intruſion on the King.

1. 17 *E.* 2. 13. *Prerog. Reg. When the King's Tenant in Chief dies, and his Heir enters into the Land before he hath done Homage to, or received Seiſin of the King, he ſhall thereby gain no Freehold; and if he dies ſeiſed during that Time, his Wife ſhall not be endowed thereof; As it fell out in the Caſe of* Manſel *the Marſhall.*

Fine levied by the Heir of the King's Tenant, *who had intruded* upon the Poſſeſſion of the King, *is void*; for the Statute is, that he ſhall thereby gain no Freehold &c. *But* if he levy a Fine *without intruding*, this is good. Per Huſſey and the Chief Baron; for the Franktenement is in him. Br. Fines. pl. 86. cites 1 H. 7. 5.

[Before this Act] The ancient Courſe of the Exchequer has been, that if in an Information of Intruſion into Lands or Tenements, the Defendant pleads Not Guilty, he ſhall loſe the Poſſeſſion; and it is ſaid, that the Reaſon of this Courſe is, Firſt, For that regularly the King's Title appeareth of the Record, and therefore the Defendant may take Knowledge thereof; and the rather, for that in every Information of Intruſion it is ſpecified of whoſe Poſſeſſion the Lands &c. were; but if the Defendant pleads Not Guilty, the King's Learned Counſel cannot know the Defendant's Title, to provide to anſwer the ſame, as the Defendant may do to the King's Title. 4 Inſt. 116. cites D. 7 El. 238.—D. 238. b. pl. 37. Paſch. 7 El. Sir R. Leigh v. Hudſon was upon the pleading a Que Eſtate of a Term, which was alledg'd to be inſufficient if the Attorney-General had demurr'd upon it; but he having travers'd the Original Leaſe, and that being found againſt the Queen, it is too late now to take Advantage thereof; for which Reaſon Judgment was given againſt the Queen. Mich. 7 & 8 Eliz.

2. 21 *Jac.* 1. 14. *When the King or any claiming under his Title, ſhall be out of Poſſeſſion or not have received the Profits of the Land &c. within the Space of* 20 *Years before any Information of Intruſion be brought to recover the ſame; In this Caſe, the Defendant ſhall plead the general Iſſue if he think fit, and ſhall not be preſſed to plead ſpecially, and ſhall alſo retain the Poſſeſſion thereof 'till the Title be found for the King.*

Where an Information of Intruſion may fitly be brought on the King's Behalf, no Scire facias ſhall iſſue, whereupon the Subject ſhall be forced to ſpecial Pleading, and be deprived of the Grace intended by this Act.

(F. e. 3) Intruſion. Proceedings, Pleadings, Judgment &c.

Keilw. 201. a. b. pl. 16. Mich. 11 H. 8. S. C.

1. AN *Information* of Intruſion *lies* for the King *in the Exchequer* upon Office found, *altho' the Record be not there* but in Chancery, or with the Eſcheator, or their Executors. It is ſufficient, that there was ſuch an Office found. By the Judges and the Counſel of the King. Jenk. 199. pl. 14.

2. Information of Intruſion was for intruding *into a certain Portion of Tythes of the Rectory of D.* in the County of Lancaſter. The Defendant pleaded *Non intruſit*; whereupon a *Commiſſion was pray'd to examine Witneſſes who are not able to come to the Court.* But Manwood denied it; for this Information is to prove a Title for the Qeeen, and is in the Nature of an Inquiſition, and is not to try the Right; but had it been to try the Title of the Defendant upon a Bill whereto the Defendant had anſwered, and that they had proceeded to Iſſue, then he might either join in Commiſſion or have Commiſſion alone; and that ſo it was in a Caſe of the **Earl of Northampton**, in Trinity Term, where certain Commiſſioners had certified a Chantry with certain Tenements; to which the Defendant anſwer'd, that it was a Chapel of Eaſe, and pray'd a Commiſſion to prove it, and it was denied. Sav. 4. pl. 10. Paſch. 22 Eliz. Norris v. Butler.

3. Information of *Intruſion* is exhibited by Name *of Outground, New Midd. Marſh, alias Marſh.* The *Defendant* pleads Not Guilty, and *gives in Evidence the Letters Patents of Stebunheath Marſh.* The Jury nor the Court is not to intend this to be the Marſh contained in the Information, but the Defendant *ought to have pleaded the Letters Patents Verbatim, and aver that the Marſh vocat. Stebunheath Marſh* contain'd in the Letters Patents, *and the Marſh* contained *in the Information are One and the ſame* &c. And if they will take Advantage of its being reputed or known to be ſo, they ſhall aid themſelves by pleading the Patent, and *ſaying, that they were reputed Time out of Mind* &c. and *not ſay*, that *at the Day of the Date of the Letters Patents they were ſo reputed*; or otherwiſe, *to ſhew how once they were Parcel, and* how they were *ſever'd, and how they came to the King again*; as it was in the Caſe of the **Earl of Leiceſter**. But to ſay, that the Jury or the Court ſhall ſeek the reputed Thing, is not Reaſon. Per Manwoood, Ch. B. Sav. 48. Paſch. 25 Eliz. Anon.

4. *General*

4. *General Informations* for Intruſion *in certis Terris et Tenementis*, are as good as Treſpaſs Quare Clauſum fregit, which is uſed in Treſpaſs at Common Law, which does *not expreſs a certain Quantity of Acres*; and cited the Caſe of **Mines** in Plowden's Commentaries, which is Quod cum Domina Regina fuit ſeiſita de certis Terris, Vaſtis &c. Per Manwood Ch. B. Sav. 48. Paſch. 25 Eliz. Anon.

5. Information was for Intruſion *into* 100 *Acres of Land and* 40 *Acres of Wood &c.* The Defendant pleading Not Guilty, the Jury *found him Guilty in* 20 *Acres of Land and* 12 *Acres of Wood, and as to the reſt Not Guilty.* It was moved in Arreſt of Judgment, that it is *not certainly found in what* 20 *Acres of Land and* 12 *Acres of Wood the Defendant had intruded*, So that the Court knew not into which to put the Queen in Poſſeſſion. But, Per Manwood, Ch. B. This ſhall be at the Apportionment of him that proſecuted for the Queen; and if he enters into other Lands or Woods than thoſe in which the Queen has Intereſt, at his own Peril be it. And this he ſaid was the Opinion of the Juſtices in the Star-Chamber. Sav. 28. pl. 67. Trin. 24 Eliz. Attorney-General v. Ayleworth.

6. Where Information of Intruſion is for intruding *into Lands* or Tenements, *and taking the Profits* &c. and the Defendant is found Guilty, the Judgment ſhall be *Quod convincatur* without any Judgment for Damages. But where 'tis for Intruſion and *cutting of Trees*, or taking other Things which are valuable, the *Judgment* ſhall be *Quod reddat Dampna* &c. Per Manwood, Ch. B. and agreed by Fanſhaw the Remembrancer. Quære. Savil 49. pl. 103. Paſch. 25. Eliz. Anon.

7. Information was in the Exchequer for intruding into the Manor of D. in the County of E. The Defendant pleaded to *Iſſue* which *was found for the Queen*, and Judgment was pray'd for the Queen. Manwood, Ch. B. ſaid, they need not be ſo haſty, for there was no Danger, for if the Defendant die there is no Prejudice to the Queen; for every *Verdict is as Judgment for the Queen*, Ad quod fuit conceſſum. Sav. 57. pl. 123. Paſch. 25 Eliz. Anon.

8. If in an Information of Intruſion the *Defendant pleads a Gift in Tail, Leaſe for Life, or Years, it ſuffices for the Queen to deny the Leaſe without maintaining her Title*; for the Defendant confeſs'd the Title in the Queen, if his Leaſe be not good; and therefore to deny the Leaſe is ſufficient. Per Shute, Baron. To which Manwood and Clenche agreed. Sav. 64. pl. 136. Paſch. 25 Eliz. in the Caſe of the Attorney-General v. Lord Berkley.

9. An Information was exhibited for intruding into certain Lands called W. The *Defendant ſaid, That* 16 *H.* 8. *one M. L. the Defendant's Mother was ſeiſed* of the Tenements in the Information *in her Demeſne as of Fee, and ſo ſeiſed died thereof ſeiſed, and they deſcended to the Defendant &c, and ſhewed How, and traverſed the Intruſion.* Shute ſaid, This Deſcent ſhall not bind the Queen, and therefore it is no Plea. But Savil ſaid, This Deſcent is made before the Queen had Poſſeſſion, viz. 16 H. 8. and is therefore good. Manwood Ch. B. asked, If they would have a Deſcent 40 Years paſt and more to make a Title againſt the Queen, and ſaid it was not reaſonable; therefore bid them to amend their Plea. Sav. 45. pl. 97. Hill. 35 Eliz. Ex Relatione Becket v. Lacy.

10. *Information* of Intruſion *is not Real but Perſonal*, and to be reſembled in all Points to Treſpaſs; For it ſuppoſes the King in Poſſeſſion, as Action of Treſpaſs ſuppoſes a Subject, and the Land is not demanded nor recoverable, but Damages only as in Treſpaſs, and the Defendant is to be *fined* Si convincatur de Intruſione as in Treſpaſs if he be found Guilty of Entry, Vi & Armis. Arg. Mo. 375, 376. Mich. 36 & 37 Eliz. in Perrot's Caſe.

A Bill of Intruſion is but in Nature of a Poſſeſſory Action, as an Action of Treſpaſs: Per Manwood Ch. B. Le. 48. pl. 49. in Caſe of the Queen v. the Ld. Vaux & al.

(G. e) Office. In what Caſes the *Eſtate of the King* ſhall be *deveſted without Office.*

Cro. E. 639. to 642. S. C. by Name of Hemſley v. Price ſays, That it was held by all except Gawdy, that by the Performance of the Condition, the Entry is lawful upon the Tenant for Life; and the Frank-tenement being defeated, the Queen's Eſtate is defeated; For ſhe is the Perſon againſt whom the Freehold was demandable and recoverable.

1. If a Man by Deed inrolled leaſe **Land** to J. S. for Life, **the** Remainder in Fee to the King upon Condition, **that** if he pay a certain Sum **of Money** to the Leſſee, **that** then he may re-enter, **and after** he pays the Money **he may well re-enter upon the Leſſee, and deveſt the Eſtate of the King without Office; For all the Ceremony of the Condition is to be done to the Leſſee, and the State of the King depends upon it; between** *Hempſley and Brice*, **per Curiam.**

Cro. E. 639. to 642. S. C. by Name of Hemſley v. Price.

2. But if **Land be** given to the King **by Deed inrolled upon Condition, if the** Condition be broken **the Donor cannot enter without Office; For the Eſtate which commences by Matter of Record, ought to be defeated by Matter of Record. M. 40. 41. El. B. R. per Cook.**

Jo. 393. Trin. 13 Car. B. R. S. C. ſays, That it was reſolved, that a Grant of the Reverſion by Deed inrolled is a good Revocation of the Uſes limited in Remainder to the King without Office or any other Act.—— Cro. C. 472. S. C.

3, **If a** Feoffment **or other Conveyance of Land be made** to the Uſe of one for Life, with divers Remainders over, **the** Remainder in Fee to the King, **with a** Power to the Tenant for Life to revoke **the ſaid Uſes, and to limit new Uſes. He may revoke the ſaid Uſes, and thereby deveſt the Eſtate of the King in Remainder, and limit new Uſes, becauſe the Eſtate is in the King, but** Quouſque &c. **and limited. Hill. 11 Car. B. R. between** *Snape and Turton.* **Adjudged per Curiam. Intr. Tr. 11 Car. Rot. 1137.**

4. If *Eſcheator ſeiſes Ward for the King to which I have Title*, and not the King, *I may re-take him*; *Contra if it be found by Office for the King*; Quod Nota bene. Br. Prerogative, pl. 83. cites 4 H. 4. 15. Per Hank and Hul.

5. *General Livery* cannot be but upon Office found, but *Special Livery* may be without Office, and without proving of the Age; but there he ſhall be bound to a Rate and Sum certain to be paid to the King. Br. Livery, pl. 56. cites 28 H. 8.

Fol. 216.

(H. e) In what Caſes the Eſtate ſhall be *void* without Office.

Art. 81.

See (H. b) pl. 1.—S. P. And per Manwood Ch. B. The Leaſe is merely void

1. **If the King** leaſe for Years, rendering Rent at the Exchequer, and for Non-payment the Eſtate to be void. **upon** Non-payment **the Eſtate ſhall be void without Office; For this is in Nature of a Limitation, and the Non-payment appears of Record. Dub. between** *Royſtone and Cinnock.* **M. 3 Ja. B.**

and determined in Right in Privity, and in Tenure; for ſo is the Pleaſure of the Prince expreſſed in the Letters Patents, That it ſhall be then void, and of no Effect. And Judgment was given accordingly againſt the Leſſee. 2 Le. 134 to 145. 33 Eliz. in the Exchequer. Sir Moyle Finch's Caſe.

(H. e. 2) Limitation. Statutes of Limitations as to the Prerogative. Concealed Lands &c. *vide the 35. H. 6. 26. a. & 4. & 27. various instances where nullum tempus occurrit regi.*

1. 21 Jac. 1. cap. 2. ENACTS, that *the King, his Heirs or Succeſſors, ſhall not hereafter ſue, impeach &c. any Perſon &c. for or concerning any Manors, Lands, Tenements, Rents, Tithes, or Hereditaments, (other than Liberties and Franchiſes, or the Iſſues and Profits which concern the ſame) nor make any Right, Claim, or Demand of, in, or to the ſame, by Reaſon of any Right or Title accrued 60 Years paſt and more, and now in Eſſe;*

Before the making this Statute in Reſpect of that ancient Prerogative of the Crown, that Nullum Tempus occurrit Regi, the Titles of the King were not reſtrained to any Limitation of Time; for that no Statute of Limitation that ever was made, did ever limit the Title of the King to any Manors, Lands, Tenements, or Hereditaments to any certain Time; and where many Records and other Muniments, making good the Eſtate and Intereſt of a Subject, either by Abuſe or Negligence of Officers by devouring Time were not to be found; by Means whereof, certain indign and indigent Perſons prying into many ancient Titles of the Crown, and into ſome of later Time concerning the Poſſeſſions of divers and ſundry Biſhopricks, Dean, and Chapters, and the late Monaſteries, Chaunteries &c of Perſons attainted, and the like have paſſed ſurreptitiouſly in Letters Patents, oftentimes under obſcure and general Words, the Manors, Lands, Tenements and Hereditaments of long Time enjoyed by the Subjects of this Realm, as well Eccleſiaſtical as Temporal; Now to limit the Crown to ſome certain time, to the End, that all the Subjects of this Realm, their Heirs and Succeſſors, may quietly have, hold and enjoy, all and ſingular Manors, Lands, Tenements and Hereditaments, which they, their Anceſtors, or Predeceſſors, or any other, by, from, or under whom they claim, have of long time enjoyed, This Act was made and moved from the Houſe of Commons; the Body whereof conſiſts of three Parts, Firſt, that Part, which above is in part rehearſed, conſiſts on three Branches; Firſt, That the King, his Heirs or Succeſſors, ſhall not at any time hereafter Sue, Impeach, Queſtion, or Implead any Perſon or Perſons, Bodies Politick or Corporate, for, or in any wiſe concerning any Manors &c. 2dly, Or for, or concerning the Revenues, Iſſues, or Profits thereof. 3dly, Or make any Title, Claim, Challenge, or Demand &c. This Part is excluſive and negative, and herein ſix Things are to be obſerved. 1ſt. This Clauſe extends to all Manner of Suits &c. either in Law or in Equity. 2dly, To all Manner of Courts whatſoever. 3dly, It extends not only to all Manner of Suits, but to all Impeachments, Queſtionings, Impleadings, making of Title, Claims, Challenges, or Demands. 4thly, Under theſe Words (Right and Title) not only bare Rights and Titles are comprehended, but Real Eſtates alſo. 5thly, Not only Suits &c. for or concerning any Manors &c. but for and concerning the Revenues, Iſſues or Profits &c. And this extends to the Ancient Demeſnes of the Crown, which are mentioned to be reſtrained by an Act 11 H. 4. 6thly, So as all Writs of Scire Facias, or other Proceſs upon any Record; all Informations of Intruſion, or charging any Man as Bailiff; all Finding of Offices, either intitling the King, or of Information are reſtrained, not only within theſe Words, (Impeach or Queſtion) but alſo within theſe Words (Or make any Title, Claim, Challenge or Demand) which are large and beneficial Words, and all other Suits &c. of what Kind or Nature ſoever. But this Negative Clauſe muſt have four Incidents; 1ſt. The King's Right and Title muſt accrue unto him above 60 Years paſt before the 19th Day of February in the 21ſt Year of King James, which was the Day of the Beginning of this Parliament, the Reaſon hereof was, That if any Title of Eſcheat, Forfeiture &c. accrued within 60 Years, then it ſhould be out of this Act; For generally the Time of Limitation to bar the King was 60 Years, but ſuch Right or Title muſt now be in Eſſe. 3 Inſt. 188, 189. cap. 87.

Unleſs the King, or ſome of his Predeceſſors, or ſome other under whom he claims, have been anſwered (by Force of ſuch Right or Title) the Rents, Iſſues, and Profits thereof within 60 Years next before the Beginning of this Parliament;—— [The 3d. Incident is,]

In this Branch, theſe Words (By Force and Virtue of any ſuch Right or Title) were materially added, for otherwiſe if the King had beed anſwered the Rents, Revenues &c. by Reaſon or Pretext of Wardſhip, Primer Seiſin, Extent, or the like, it might have made a Doubt, whether ſuch an anſwering of the Revenues &c. had been within this Act, which Doubt is cleared, that it muſt be by Force or Virtue of any ſuch Right or Title whereby the King impeaches the State of the Subject. 3 Inſt. 189. cap. 87.

Or that the Same have been duly in Charge to the King, or Queen Elizabeth within the Space of 60 Years.——[The 4th. Incident is,]

(*Duly in Charge*) in Judgment of Law, is the Roll of the Pipe; For altho' a Note before the Auditor, or any other may be a Mean to bring it in Queſtion, and to be put in Charge, yet that is not in Judgment of Law ſaid to be duly in Charge, unleſs it be in Charge in the Pipe. 3 Inſt. 189. cap. 87.

It cannot ſtand in Super, unleſs the

Or have ſtood Inſuper of Record within the ſaid Time.

Thing in Queſtion were before duly in Charge. 3 Inſt. 189. cap 87.

This is the ſecond Part of the Body of the Act, and as the firſt Part is Negative and excluſive of the Right and Title of the King, ſo this Part is Affirmative

And that every Perſon and Perſons, Bodies Politick and Corporate, their Heirs and Succeſſors, and all claiming by, from, or under them, or any of them, for and according to their, and every of their ſeveral Eſtates and Intereſts, which they have or claim to have in the ſame reſpectively, ſhall hereafter quietly and freely have, hold, and enjoy againſt his Majeſty, his Heirs and Succeſſors, claiming by any Title accrued, or grown 60 Years paſt, or above, and now in Eſſe, all and ſingular Manors, Lands, Tenements, Rents, Tithes and Hereditaments whatſoever, except Liberties and Franchiſes, which he or they, or his or their, or any of their Anceſtors or Predeceſſors, or thoſe from, by, or under whom they claim, have held or enjoyed.

and eſtabliſhing the State of the Subject. The Miſchiefs before this Statute were of two Sorts, viz. either when the King had an Eſtate veſted, or continued in him; or where the King had but a bare Right; For Example, the King's Tenant ſeiſed of Lands &c. in Fee is attainted of Felony and dies, the King has a Real Eſtate in him; but if before the Felony, the King's Tenant were Diſſeiſed, and after is attainted and dies, now has the King but a Bare Right in both theſe Caſes, & ſic in Similibus the Subject is provided for by this Act, both by the firſt Part and by this alſo; For where in this Part it is ſaid, (according to their and every of their ſeveral Eſtates and Intereſts which they have or claim) If they have an Eſtate and the King but a bare Right or Title, then are they within theſe Words, (which they have) And if the King has a Real Eſtate in him, then are they within theſe Words, (or claim) ſo as the Remedy is applied to both the Miſchiefs; Again the Words in this Part are further, (have held or enjoyed) that is where the Subject has an Eſtate, and the King but a bare Right or Title. 3 Inſt. 190. cap 87. —— Moreover, the Words of this Part are (againſt him, his Heirs or Succeſſors) ſo as admit in the Caſe but before, the King's Tenant being diſſeiſed, as is aforeſaid before this Attainder of Felony, that that Diſſeiſor had been diſſeiſed, or had mortgaged the Land before this Statute, this Act in this Caſe barrs the King of his Right and Title, and to that End works upon the State of the Diſſeiſor or Mortgagee; but yet the firſt Diſſeiſor or the Mortgagee for the Condition performed or broken may re-enter; For the Words of this Part be (againſt the King, his Heirs and Succeſſors) ſo as the Bar is only againſt them; and every Subject ſhall take Benefit of this Act, for the King's Right and Title is thereby utterly barred; and there is a Saving hereafter in this Act to all Perſons &c. other than the King &c. all ſuch Right &c. as they ought to have had before this Act. 3 Inſt. 190. cap. 87.

* Theſe Words extend to all Caſes where the Real Eſtate is in the King; hereby is underſtood the actual Taking of the Rents, Iſſues, Revenues or Profits by one that claims an Intereſt in the Land; for albeit the King may in Law charge him as Bailiff, yet without Queſtion De Facto, he did take the Rents, Iſſues, Revenues and Profits, and ſuffices to anſwer the Letter and Meaning of this Act. 3 Inſt. 190.

*Or taken the * Rents, Revenues, Iſſues or Profits thereof by the ſpace of 60 Years next before the Beginning of this preſent Seſſion of Parliament, unleſs his Majeſty, or ſome of his Progenitors or Anceſtors, or ſome other Perſon or Perſons, Bodies Politick or Corporate, by, from, or under whom his Majeſty any thing has, or lawfully claimeth, in the ſaid Manors, Lands, Tenements, Rents, Tithes or Hereditaments, by Force of any Right or Title, have been anſwered within 60 Years next before the Beginning of this preſent Seſſion of Parliament, or that the ſame have been duly in Charge, or ſtood Inſuper of Record, as aforeſaid, within the ſaid Space of 60 Years.*

This Part ſecures the Subject againſt the Subject, viz. againſt Patentees and Grantees of Concealments, defective Titles or Lands not in Charge, and all claiming under them. A beneficial Law both

And furthermore, that every Perſon &c. their Heirs and Succeſſors, and all claiming by or under them &c. ſhall quietly enjoy ſuch Manors, Lands &c. (except Liberties and Franchiſes) as they now claim and enjoy, (whereof his Majeſty, his Progenitors &c. by Force of ſome Right or Title, have not been anſwered the Rents &c. thereof, within 60 Years next before the Beginning of this preſent Seſſion of Parliament) nor the ſame have been duly in Charge, or ſtood Inſuper of Record as aforeſaid, within the Space of 60 Years, againſt all Perſons, their Heirs &c. claiming any Eſtate or Right &c. in, or to the ſame, by any Letters Patents, or Grants upon Suggeſtion of Concealment, or wrongful detaining, or not being in Charge, or defective Titles, of, or for which ſaid Manors &c. or any of them, no Verdict, Judgment, Decree, Judicial Order upon hearing or Sentence now ſtanding in Force, has been had or given in any Action &c. in any of his Majeſty's Courts at Weſtminſter, for or in the Name of the King's Majeſty, or of the late Queen

Eliz.

Eliz. or *for any the ſaid Patentees or Grantees, or for their, or any of their Heirs or Aſſigns within* 60 *Years next before the Beginning of this preſent Seſſion of Parliament.* for the Church and the Commonwealth,

in reſpect of the Multitude of Letters Patents and Grants of theſe Natures and Qualities, and many of them of large Extents, and in general Words, and had paſſed through the Hands of many indigent and needy Perſons &c This Part extends to Liberties and Franchiſes which the former two Parts did not. 3 Inſt. 190. cap. 87.

This Act ſhall not extend to impeach the King's Right or Title to any Reverſion or Remainder, nor to alter the Tenures or Services of Lands; and here alſo the Right of all others (ſave of the King) is ſaved.

Neither ſhall this Act extend to annul the Cuſtom of 2 *d. paid for every Chaldron of Sea-Coals at Newcaſtle upon Tyne.*

All Fee Farm Rents, and other Rents paid by the more part of 60 *Years, are hereby confirmed.* This was added for preſerving

of the King's Fee Farms and Rents out of ſuch Manors and Rents &c. which are eſtabliſhed and made ſure by this Act; For Example, King E. 6. granted the Manor of D. which came to him by the Statute of Chanteries to J. S. and his Heirs, reſerving a Fee Farm or any other Rent, which Grant for ſome Imperfection was inſufficient in Law to paſs the ſaid Manor, and yet is eſtabliſhed and made ſure by this Act, and this Proviſo makes good the Fee Farm or Rent to the King, if he has been anſwered the ſame by the greater Part of 60 Years. 3 Inſt. 191. cap. 87.

Provided, that no putting in Charge, ſtanding Inſuper, or anſwering the Rents or Profits of any Lands or Hereditaments, by Force or Colour of any Letters Patents, Grants or Concealments, They were called Letters Patents of Concealment, be-

cauſe either they had a Clauſe before the Habendum, Quæ quidem Maneria nuper fuerunt a nobis Concelata, Subtracta, vel Injuſte detenta, or to the like Effect, or elſe a Proviſo after the Habendum, to the like Effect; Letters Patents of Concealment were granted in Queen Mary's Time, and the firſt, that I find, were granted to Sir George Howard; and in all ſucceeding Acts of Parliament of Confirmation of Letters Patents, Letters Patents of Concealments are excepted. 3 Inſt. 189. cap. 87.

Or defective Titles, By Letters Patents paſ-

ſed by the Warrant of certain Commiſſioners under the Great Seal for Compoſitions of defective Titles, pretending the ſame to be for the King's Benefit, and Safety of the Subject, in which Letters Patents no Words of Concealment &c. are mentioned, but yet upon the Matter they were ſuppoſed to be concealed &c. from the Crown. 3 Inſt. 189. cap. 87.

Or of Lands, Tenements or Hereditaments, out of Charge, This was a new Deviſe

to have a Certificate that they were not in Charge, and then to take a Grant from the King for a very ſmall Compoſition &c. and theſe were but Inventions and ſubtle Devices to deceive the King; to rob him of his Tenures, and to the infinite Vexation and Trouble of the Subject, all which Miſchiefs are now remedied by this Act. 3 Inſt. 189 cap. 87.

Or by Force or Colour of any Inquiſitions, Preſentments upon any Commiſſion, or other Authority to find out Concealments, defective Titles, or Lands, Tenements, or Hereditaments, out of Charge, ſhall be deemed or taken to be a putting in Charge, ſtanding Inſuper, or anſwering the Rents or Profits to the King or his Predeceſſors, unleſs thereupon ſuch Lands, Tenements, or Hereditaments have been upon any Information or Suit, (on the Behalf of the King or his Predeceſſors) upon any lawful Verdict given, or Demurrer in Law, adjudged, and upon hearing ordered or decreed to the King or his Predeceſſors, within the ſaid time of 60 *Years.* This was a neceſſary Clauſe to be added; for of this Kind there were infinite Numbers. 3 Inſt. 189. cap. 87.

This Act ſhall not extend to Lands for which Compoſition is or ſhall be made before the End of this Parliament.

(I. e) *Eccleſiaſtical Laws.* The *Antiquity.*

By the Grant of W. the Conqueror, the Biſhops originally had an intire Juriſdiction to judge all Cauſes relating to Religion; For before that Time the Biſhop and the Sheriff kept their

[1.] BEFORE the Time of King William the Conqueror, all Matters, as well Spiritual as Temporal were determined in the Court of the Hundred, where were wont to ſit a Temporal Judge, called Aldermannus, and a Biſhop, the one for Temporal, the other for Divine Right; but this was altered by King William, (and it ſeems by Parliament, for this was by the Aſſent of the Biſhops, Abbots, and all the Princes of the Realm;) For he ordained, That the Biſhop or Arch-Deacon ſhould not hold Plea of Epiſcopal Laws, and Quæ ad Regimen animarum pertinent in the Hundred but by himſelf, and their Right ſhould be done, not according to the Hundred, but according to the Epiſcopal Laws and Canons. All this appears by the Charter of King William. Irrot. 2 R. 2. Pro Decano & Cap. Eccles. Lincolne. Jan. Angl. 76, 77.

Court together. So that before the Conqueſt there were no ſuch Courts in England as we now call Courts Eccleſiaſtical or Spiritual; For anciently the Biſhops ſat in Judgment together with the ſecular Judges and Sheriffs on the ſame Tribunal, eſpecially about Eaſter and Michaelmas, as appears by Mr. Selden in his Notes on Eadmer, pag. 167, as alſo by the Laws of King Athelſton. And long after the Conqueſt, in the Reign of H. 2. 1164, by his Laws made at Clarendon, the Biſhops might intereſt themſelves with the King's ſecular Judges where the Matter in Judgments extended not to the Diminution of Members, or were Capital. Notwithſtanding, at the ſame time the Biſhop's Eccleſiaſtical Courts, as alſo the Arch-deacon's Courts were eſtabliſhed in this Kingdom, and further ratified and confirmed by theſe very Laws of H. 2. made at Clarendon. In the 1 E. 6. it was enacted, That all Proceſs out of the Eccleſiaſtical Courts ſhould from thenceforth be iſſued in the King's Name only, and under the King's Seal of Arms, contrary to the Uſage of former Times. But this Statute being repealed by Queen Mary, and not revived by Queen Eliz. the Biſhops and their Chancellors, Commiſſaries, and Officials, have ever ſince exerciſed all manner of Eccleſiaſtical Juriſdiction in their own Names, and under the diſtinct Seals of their ſeveral Offices reſpectively. Alſo by the Statute 25 H. 8. cap. 19. it being enacted, That all former Canons and Conſtitutions not contrary to the Word of God, the King's Prerogative, or the Laws and Statutes of this Realm, ſhould remain in Force till reviewed by 32 Commiſſioners to be appointed by the King, and that Review not being made in that King's time, nor any thing done therein by E 6. (though he had alſo an Act of Parliament to the ſame Effect) the ſaid ancient Canons and Conſtitutions remained in Force as before they were, whereby all Cauſes Teſtamentary, Matrimonial, Tithes, Incontinency, Notorious Crimes of publick Scandal, wilful Abſence from Divine Service, Irreverence, and other Miſdemeanors in or relating to the Church &c. not puniſhable by the Temporal Laws of this Realm, were ſtill reſerved unto the Eccleſiaſtical Courts as a ſtanding Rule whereby they were to proceed and regulate the Exerciſe of their Juriſdiction. Godolp. Rep. Introduction, pag. 22, 23, 24. ——— But though the Biſhop and a Temporal Judge, called Aldermannus were wont to ſit together, yet the one ſat for Matters of Spiritual, aud the other of Temporal Cognizance. But that was altered by King W. by Aſſent of the Biſhops, Abbots, and all the chief Perſons of the Realm; For he ordained, That the Biſhop or Arch-deacon ſhould not hold Plea of the Epiſcopal Laws, & quæ ad Regimen Animarum pertinent, in the Hundred but by themſelves, and there adminiſter Juſtice, not according to the Law of the Hundred, but according to the Eccleſiaſtical Laws and Canons, as appears by King William's Charter inrolled 2 R. 2. Pro Decano & Capitulo Lincoln. Godolph. Rep. 96. cap. 11. cites Jan Ang. 26, 27.

(K. e) *Commutation. Penance.*

Prynne's Cott. Rec. Abr. 536. No. 24 — Redemption or Commutation of Penance being a Liberty liable

1. THE Commons pray, That where the Ordinaries put to a Pain pecuniary all thoſe who are found Guilty of the great Sin of Adultery and Lechery, ſcilicet, ſometimes 40 s. and ſometimes more or leſs, by which the Lieges are greatly impoveriſhed, and ſuch Sins the more ſuſtained and uſed, where, by the Law of God, ſuch Sinners ought to be chaſtiſed by Corporal Penance, to the Effect that ſuch Sin ſhould be rather taken away from among the People; They pray, that it may be ordained, that no Ordinary put

put any one to pecuniary Pain for ſuch Offences, upon Pain of Forfeiture of ten times as much as they ſhall levy. Anſwer. The King has charged the Lords Spiritual thereof to ordain due Remedy, and if they do not, the King will have it well in Memory, and cauſe to amend it in time to come. Rot. Parl. 1 H. 5. N. 24.

to be abuſed on many Accounts, and having in all times been very much abuſed, the

Church has made many wholſome Orders concerning it. (1.) That there be *no Commutation* at all, *but for very weighty Reaſons, and in Caſes very particular.* (2.) That when Commutation is made, it be *with the Privity and Advice of the Biſhop, under his Hand and Seal*; and not by the Chancellor, Commiſſary, or Official; or (if in any Caſe it be done by him) that he give a juſt Account yearly to the Biſhop of all Commutation Monies in that Year, on Pain of one Year's Suſpenſion. (3.) That the *Money be applied to pious and charitable Uſes.* (4.) That if the Crime be publick and notorious, the *Satisfaction made* to the Church ſhall be *ſignified to the Congregation* where the Offender lives, with publick Profeſſions of his Submiſſion and Repentance. (5.) That the Favour of Commutation be *not granted a ſecond time* to the ſame Perſon for the ſame Fault. Indeed none of theſe Regulations are in Force at this Day; But yet they may be uſeful Rules to go by till ſomewhat more authentick be framed upon this Head Gibs. Cod. 1092.

Inſtead of regulating Commutations, and the Abuſes of them, the Commons in Parliament petitioned (1 R. 2. & 1 H. 5.) that there might be no Commutations at all. Gibs. Cod. 1093.

2. Rot. Parl. 45 E. 3. N. 24. Complaint of the Ordinaries, becauſe they do not juſtice Treſpaſſers by Pain Corporal, but only Pecuniary, and Simile 44 E. 3. N. 41. but Vacat.

3. Rot. Parl. 45 E. 3. N. 24. Complaint of the Ordinaries for giving Acquittances to the Executors before full Account made &c.

4. In Caſe of Commutation of Penance it *muſt be after Sentence.* 3 Inſt. 150. See 2 Roll. Rep. 387. Mich. 21

Jac. in the Star-Chamber, Dr. Barker and Mr. Auditor Jones Regiſter's Caſe, whereig 6 Rules were laid down far Commutation. 1. That Penance ought to be injoined before the Party ſhall be admitted to make Commutation. 2dly, That it ought to be in open Court. 3dly, That it ought to be injoined in the Preſence of the Publick Regiſter. 4thly, That the Act in the Regiſter Book ought to be entered. 5thly, That it ought not to be granted to Perſons relapſed. 6thly, That the Commutation Money ought to be employed to pious Uſes. But Hobart Ch. J. That as to Commutation with Perſons relapſed, tho' in general it may not be, yet there may be ſome Circumſtances in a particular Caſe which may make it reaſonable. And Ld Maundeville held the firſt Rule true, That Penance ought to be Precedent; For that there cannot be Commutation for Penance where none is injoined. 2dly, That Commutation may be out of open Court, and therein the Difference is this, That ſuch Things as are Contentioſæ Juriſdictionis ought to be determined in Foro Publico; but that ſuch as are Voluntariæ Juriſdictionis where the Inquiry is Ex Officio, Commutation may be out of Court, even In Foro alieno in another Dioceſs. 3dly, That it cannot be of Neceſſity, that there be any publick Regiſter preſent; For till H. 3d's Time there were no Publick Regiſters, and that it is ſufficient if it be in Preſence of a Publick Notary. 4thly, The Entry belongs to the Clerk, and not to the Judge, and the Party ought to ſee it done for his own Advantage. 5thly, As for Perſons relapſed, the Text is, That there ſhall not be Notary Recidivo. 6thly, As for the laſt that it is a good, certain and true Rule; And he thought clearly, that Chancellors are chargeable to inquire upon the Statute of 43 & 49 Eliz. of Charitable Uſes.

5. Publick Penance *is* a *Puniſhment impoſed for a Crime*, by ſtanding in ſome publick Place, and making an Acknowledgment of it; to ſatisfy the Church for the Scandal given by an evil Example. In the Caſe of Inceſt, Adultery &c. the Sinner is uſually enjoined to do publick Penance in the Cathedral or Pariſh Church, or publick Market, Bare-footed and Bare-headed, in a white Sheet, and to make an open Confeſſion of his Crime in a preſcribed Form of Words &c. For ſmaller Faults a publick Satisfaction or Penance is to be made in the Court, or before the Miniſter and Churchwardens, or ſome of the Pariſhioners, as in Caſes of Defamation &c. Wood's Inſt. 507.

6. *Penance* may be *changed into a Fine* or Sum of Money to be given to Pious Uſes, which *is called Commuting*. But the Judge ought not directly or indirectly to take any thing hereof to his own Uſe, or for the Aſſeſſment thereof, or entring the Publick Act. If he doth, it is Extortion. Quære, If he takes only his cuſtomary Fees. Wood's Inſt. 508.

Fol. 217.

See Prohibition (A)

(L. e) *Prohibition. Eccleſiaſtical Juriſdiction.* The *Antiquity* of their Juriſdiction.

1. 1 R. 2. cap. 14. The Clergy greatly complain for that the People of Holy Church purſuing in the Spiritual Court for the Tithes, and their other Cauſes which of Right ought, and of old Times were wont, to pertain to the ſame Spiritual Court are indicted for this Cauſe &c.

(M. e) *Adminiſtration.* The *Antiquity* of Eccleſiaſtical Juriſdiction thereof.

The Books of Common Law obſerve that the Foundation of this Right which the Church has, was by *ſpecial Conceſſion from the Secular Power*; which is ſo far from being deny'd, that it is in no other Doctrine than what Lyndwood himſelf has laid down.

1. THE Granting of Adminiſtration anciently and at the Common Law, did not appertain to the Eccleſiaſtical Courts but to the Temporal Courts.

2. But the Granting of Adminiſtration was given to the Eccleſiaſtical Courts by Parliament. Among the Conſtitutions of Othobon, in cap. De Bonis Inteſtatorum. Fol. 52. it is ſaid, that this was heretofore provided ſo by the Prelates of the Realm with the Approbation of the King and his Barons.

3. And in a provincial Conſtitution, as appears in Linwood, 190. which was made by John Stratford, Archbiſhop of Canterbury Anno Dom. 1380. it appears, that it was heretofore ordained Conſenſu Regio & Magnatum Regni. It appears in Linwood, cap. de Teſtamentis. Fo. 92. by the † Conſtitution of John Stratford, which was Anno Dom. 1380, that then Probat. of Teſtaments belonged to the Eccleſiaſtical Court of all Things deviſed by Teſtament, except of Lay Fees, but not of them.

— Sed hic poſſet quæri, unde provenit hæc Libertas; videtur namque quoad primum, quod Eccleſia non haberet ſe intromittere de tali Approbatione Teſtamentorum, ſed potius, pertineret ad Judices Laicos. Dic, quod hæc Libertas, quoad Approbationem hujuſmodi, fundatur ſuper conſenſu Regio, & ſuorum Procerum, in talibus ab antiquo conceſſo. — And again, — De conſuetudine tamen hæc Approbatio in Anglia pertinet ad Judices Eccleſiaſticos, Epiſcopos videlicet et eorum Officiales. Gibs Cod. 560.

Lord Coke ſays, It is held in 2 R. 3. tit. Teſtament 4. That it is only of late Time that the Church had the Probate of Teſtaments in this Land, 'till it was by an Act &c. For the People have Probate of Teſtaments in all other Places except England; and in ſeveral Places within England the Lords of Seigniories have Probate of Teſtaments at this Day in their Temporal Courts. And Tremaile there ſaid, that he is Steward in his Country, and both Free and Bond Tenants prove their Teſtaments before him in the Court Baron, and ſo it has been uſed Time out of Mind. And ſo Fineux and all the Juſtices in 11 H. 7. 12. b. agreed, That the Probate of Teſtaments did not belong to the Spiritual Court, but of late &c. that they have not this by the Law Spiritual. And Linwood, who was Dean of the Arches, and wrote Anno Dom. 1422. in the Reign of H. 6. lib. 3. tit. de Teſtamentis. f. 124. confeſſes, that Probate of Teſtaments belongs to the Ordinaries De Conſuetudine Angliæ et non de communi jure, and that in other Realms the Ordinaries have it not: And in another Place he affirms the Power of the Biſhop in Probate of Teſtaments, per Conſenſum Regni & ſuorum Procerum ab Antiquo. And Lord Coke ſays, he has a Book publiſh'd in Latin Anno Dom. 1573, by the Right Revd. Prelate Matthew Parker, Archbiſhop of Canterbury, who was very expert in Matter of Antiquity; in which it is affirm'd in theſe Words, Rex Angliæ olim erat Conciliorum Eccleſiaſticorum Præſes, vindex temeritatis Romanæ, Propugnator Religionis, nec ullam habeant Epiſcopi Authoritatem præter eam quam a Rege acceptam referebant, jus Teſtamenta, probandi non habeant, Adminiſtrationis poteſtatem cuique delegare non poterant. So that originally the Eccleſiaſtical Judge could not commit Adminiſtration to any, who might ſue or be ſued as Adminiſtrator, but it was given to the Ordinary by an Act; that is to ſay, by the Act of 31 E. 3. cap. 11. And in ancient Time before this Statute, it appears by Record, that when a Man died inteſtate, and had made no Diſpoſition of his Goods, nor committed his Truſt to any; in ſuch Caſe, the King (who is Parens Patriæ) was wont by his Miniſters to ſeiſe the Goods of the Inteſtate, to the Intent that they ſhould be preſerved and diſpoſed for the Burial of the Deceaſed, for Payment of his Debts, for Advancement of his Wife and Children, if he has any, and if none, thoſe of his Blood. And it appears in Rot. Clauſ. de 7 H. 3. M. 16. Bona inteſtatorum capi ſolebant

ſolebant in manus Regis &c. And afterwards this Care and Truſt was committed to the Ordinaries; for none could be found more apt to have ſuch Care and Charge of his tranſitory Goods after the Death of the Inteſtate than the Ordinary, who all his Life had the Cure and Charge of his immortal Soul, as it is ſaid, Plowd. Com. 280. in Griesbrook's Caſe, and therefore he was to this Purpoſe conſtituted In Loco Parentis. 9 Rep. 37. b. &c. Trin. 42 Eliz. in Henſloe's Caſe — But * Windham, J. affirm'd, that the Juriſdiction of Teſtamentary Cauſes belong originally to the Spiritual Court, and not to the King; For a Man by our Law cannot make a Gift after he is dead, but the Spiritual Law will inforce the Executor to do it. And where Lord Co. 9 37. b in Henſloe's Caſe; and Co. 5. 16. b. de Jur. Reg. Eccleſ. holds that they did not originally belong to the Ordinary, and cites a Record that Bona Teſtatoris capi ſolebant &c. he thought that this Record proves only, that if one dies Debtor to the King thoſe of the Exchequer will iſſue Writ of Prerogative to ſeiſe all his Goods &c. 'till he has ſatisfied the King; and this Matter is now in Uſe, but the Word (Solebant) is not in the Record. But Twiſden J. e contra, that Teſtimentary Cauſes belong not originally to the Spiritual Court, but to the Temporal Courts and Common Law, and were proved before Lords of Manors Co. 9. 37. b. as they now are in ſome Places. And there are ſeveral Precedents in our Books, eſpecially in the old Books of Entries, where Actions upon the Caſe and ſome Actions for Debt were brought for Legacies in the Hundred Court, but this is now antiquated. But in my Time I know that it was adjudg'd here, that if one by his Teſtament deviſes a Legacy to be paid out of his Land (as out of the Profits thereof) that for ſuch, Action upon the Caſe lies in this Court. And Lord Dyer ſaid, that the proper Remedy for it is to ſue in Chancery, which proves that it does not belong to the Spiritual Court; quod fuit conceſſum. Sid. 46. Mich. 13 Car. 2. B. R. in the Caſe of Nicholſon v. Shirman. — * S. P. Per Windham, J. 1 Lev. 158. Hill. 16 & 17 Car. 2. B.R. in the Caſe of Price v Parker. —— Wills are proved by Preſcription in ſome Manors before the Steward, tho' no Lands paſs by it as in the Manor of Mansfield, and in Cowley and Caverſham Manors in Oxfordſhire; and its being proved in the Spiritual Court is but of later Time, and belongs not to it of Common Right, as Linwood owns, nor is it ſo in other Kingdoms. Went. Off. Ex. 43. —— But Noy affirm'd, that the Ordinary might commit Adminiſtration *at the Common Law before the Statute* 31 *E.* 3. which is but an Affirmance of the Common Law. Arg. Lat. 68. Paſch. 1 Car. in Mayow's Caſe. —— The Court held, that Adminiſtrations originally belong'd to the Biſhops, and the Inſtance of ſome Lords is not a Proof to the contrary; and denied the Opinion in 9 Rep. Henſloe's Caſe. 1 Salk. 37. Trin. W. & M. B.R. Manning v. Napp.

† 2 Inſt. 488. cites this Conſtitution of John Stratford as made at a Synod in London, 1280 but in 9 Rep. 39. in Henſloe's Caſe it is 1380 as here. But in Cart. 131 Trin. 18 Car 2. C. B. in the Caſe of Hughes v. Hughes, Dr. Walker, a Civilian, who argued in that Caſe, ſaid, he admitted that John Stratford was Archbiſhop of Canterbury, and held a Synod in London, but not in 1380, but was dead 30 Years before —— And it appears in Chronica W. Thorn, (among the Decem Scriptores) pag. 2066. that John Stratford, Biſhop of Wincheſter, was made Archbiſhop in 1333. And Ibid. pag. 2118. it is ſaid, that he died in 1348.

4. By the Law of Scotland, in Time of King David the Firſt, who lived in the Time of H. 1. King of England, Placitum de Teſtamento coram Judice Eccleſiaſtico tractari debuit & Placitum de Teſtamentis ad Forum Eccleſiaſticum pertinuit. Skene Regiam Majeſtatem. lib. 1. cap. 2. lib. 2. cap. 38.

5. Si Teſtator nullos Executores nominaverit poſſunt propinqui & ejus Conſanguinei ad hoc faciendum ſe ingerere. Skene Regiam Majeſtatem. lib. 2. cap. 38. verſus 4. Ita quod ſi aliquem hæredem vel alium Rerum defuncti Detentorem reperiunt, habebunt Breve Domini Regis direct. Vicecomiti in hac forma, Rex Vicecomiti ſalutem Præcipimus tibi quod juſte & ſine dilatione facias ſtare rationabile teſtamentum N. ſicut rationabiliter magis ſtare poterit & ſecundum quod ille illud fecit & quod ſtare debet Teſtamentum; Si quis autem ejus brevis Autoritatem convent. aliquid dixerit contra Teſtament. ſcilicet, quod not fuit rite factum, vel quod res petita non fuit legata, tunc quidem Placitum illud in Curia Chriſtianitatis inde audiri debet & finaliter terminari; quia placitum de Teſtamentis coram Judice Eccleſiaſtico tractari debet &c.

6. Mirror of Juſtices. Fol. 27. cap. 2. S. 13. * Whereas he holds Plea againſt the † Prohibition of the King, and in Prejudice of the Dignity of his Crown ‡ ſince to no Judge Eccleſiaſtical it does not belong to hold any Plea Secular but of Teſtament and Matrimony in Prejudice of the Power of the King.

* Orig. is (de que il)
† Orig. is (Defence)
‡ Fol. 218.
‡ Orig is (Deſicome)

(N.e)

See Eccleſiaſtical Court.

(N. e) Eccleſiaſtical Law. Juriſdiction.

1. Rot. Parl. 17 E. 3. N. 52. Complaint made by the Commons of the Deans and Officials for holding Plea of Things pertaining to the Crown.

2. 6 E. 1. Rot. Patent. Memb. 5. in Dorſo. Upon great Complaint made by the Sheriff, Bayliffs, and Men of the County of Cornwall, that the Biſhop of Exeter and his Miniſters trahunt in placita Coram eis in Curiam Chriſtianam de Catallis & Debitis quæ non ſunt de Teſtamento vel Matrimonio & etiam de Laicis Feodis, Foſſatis, Diviſis, Parcis, Rivariis, Piſcariis, Sabulonibus, & de Trangreſſionibus & Diſtrictionibus in eis factis quorum cognitio & Correctio ad Coronam & Dignitatem noſtram & non ad Forum Eccleſiaſticum pertinent & etiam quosdam eorum per ſententias Excom. compulerunt & adhuc compellere non ceſſant ad Redemtionis querimoniarum graviſſimas eidem Epiſcopo ex cauſis prædictis præſtandis & ad Obligationes ei faciendas &c. in Regiæ Dignitatis & Coronæ læſionem & noſtri & multorum Exhæreditationem manifeſtam quæ ulterius Suſtinere nolumus nec debere conſtituimus &c. and therefore a Commiſſion granted to certain Perſons Ad Audiend. & Terminand. thoſe Grievances by Oath of &c.

3. 4 E. 2. lib. Parl. Fol. 86. Ad querelam Communitatum Regni Angliæ conquer. de eo quod Prælati Regni loqueſcunt nimis large in Cauſis & Contentionibus pertinentibus ad Coronam & Dignitatem Regiam &c. Ita Reſponſum, ſi quis ſenſerit ſe gravatum quærat Remedium ſibi in Cancellaria.

4. Hil. 6 E. 1. B. Rot. 13. Inhibitum fuit quod non proſequatur ulterius in Curia Chriſtianitatis de Debitis & Catallis &c.

For laying violent Hands on a Spiritual Perſon, Action lies in the Spiritual Court, but he ſhall not ſue there for Damages. Per Coke, Ch. J. Roll. R. 255.

5. Statutum de Circumſpecte agatis 13 E. 1. In Magna Charta, fol. 89. De violenta Manuum injectione in Clericum & in Cauſa Defamationis conceſſum fuit alias quod Placitum inde teneatur in Curia Chriſtianitatis cum non petatur Pecunia ſed agatur ad Correctionem peccati. Et ſimiliter pro Fidei Læſione.

6. Prohibitio formata de Statuto Articuli Cleri in Magna Charta. 2 part. fol. 70. b. Cum Cognitiones Placitorum de Cauſis Pecuniariis & de aliis Catallis & Debitis quæ non de Teſtamento vel Matrimonio ad Coronam & Dignitatem noſtram pertineant de Conſuetudine ejuſdem Regni approbata & hactenus obſervata &c.

* Proof of Wills and the Validity of them belongs to the Eccleſiaſtical Court, and if they adjudge a Perſon capable of making a Will, B. R. will not intermeddle; for it is within their Juriſdiction to adjudge when a Perſon is of Age to make a Will. Per Cur. 2 Mod. 315. Trin. 30 Car 2. B. R. Smallwood v. Brickhouſe —— The Eccleſiaſtical Court is the proper Judge whether a Will or no Will, and howſoever they determine 'tis concluſive at Law. Comb. 454. Mich. 9 W. 3. B. R. Gray v. Tench.

† If any marry without Proclamation of Banns or Licence, they are citable for this to the Eccleſiaſtical Court, and no Prohibition lies Reſolved. Jo. 259. Matingley v. Martin. —— Wife or not Wife is triable at Common Law, but whether lawfully married or not is triable in the Spiritual Court. Sti. 10. Paſch. 13 Car. Betſworth v. Beſtſworth. —— Jenkins 289. pl. 26. ſays, the Spiritual Court has nothing to do with the Legality of the Marriage, but where the Temporal Court commands them to inquire and certify it, and this in Real Actions only.

7. It ſeems by the Statute of 2 H. 5. cap. 3. Quod vide 2 H. 5. Rot. Parl. N. 5. accordingly that Cauſes concerning * Teſtament and † Matrimony appertain to the Conuſance of the Temporal Court; But Quære the Bill upon the File, if it be not miſtaken in the Print.

8. Rot.

8. Rot. Parl. 25 E. 3. 2 Part. N. 64. Upon Petition of the Clergy, the King answered, If Title of Voidance be taken in Plea before Justices, whereof the Conusance appertains to the Court Christian, let the Party have his Challenge, and the Justices do him Right.

9. These Pleas here ensuing are * meer Spiritual, whereof the Ecclesiastical Court may hold Plea, scilicet, De Correctionibus quas Prælati faciunt, Pro Mortali Peccato, scilicet, Pro † Fornicatione, Adulterio & ‡ Hujusmodi, || pro quibus aliquando infligitur Pœna ¶ Corporalis, aliquando Pecuniaria, maxime si convictus fuerit de Hujusmodi Liber Homo. Item si Prælatus puniat Pro Cœmeterio non clauso, ** Ecclesia discooperta, vel non decenter ornata, in quibus casibus alia pœna non potest infligi quam Pecuniaria. Item si Rector petat versus Parochianos †† Oblationes & Decimas debitas, vel consuetas; vel si Rector agat contra Rectorem de Decimis Majoribus, vel Minoribus, dummodo non petatur quarta Pars valoris Ecclesiæ. Item si Rector petat Mortuarium in partibus ubi Mortuarium dari consuevit. Item si Prælatus alicujus Ecclesiæ, vel Advocatus petat a Rectore ‡‡ Pensionem sibi debitam, Omnes Hujusmodi Petitiones sunt faciendæ in foro Ecclesiastico. |||| Statutum de Circumspecte agatis 14 E. 1. in Magna Charta, fol. 89. Rot. Parl. 25 E. 3. 2 Part. N. 62. It was prayed by the Clergy that this Statute might be confirmed, yet it is not done.

* Those Things are || Fol. 219. called meerly Spiritual, becaufe they have no Temporal Mixture, and are Corrections *Pro Salute Animæ*. Hereſy, Schiſms, Holy Orders and the like, are meer Spiritual Things. But the Power

of granting Adminiſtration and Probate of Teſtaments, do not de Jure Communi belong to the Court Chriſtian. 2 Inſt. 488.

† The Conuſance of all *Fornications*, Adulteries, and *Suſpicious living in Adultery*, belongs to the Eccleſiaſtical Court. Jo. 259. Matingley v. Martin ——In ancient Time the King's Courts, and eſpecially the *Leet*, had Power to inquire of and puniſh Fornication and Adultery, by the Name *Letherwite* [or *Legerwite*, for which ſee Somner's Gloſſ. Verbo Letherwithe] and it appears often in Doomſday-Book, that the King had the Fines aſſeſs'd for thoſe Offences, and that they were aſſeſs'd in the King's Courts, and could not be inflicted in Court Chriſtian. 2 Inſt. 488.

‡ This extends to *Sollicitation of Chaſtity* of any Woman, and to *Inceſt*, the firſt whereof is a leſs, and the laſt a greater Offence than thoſe mentioned of Fornication and Adultery. 2 Inſt. 488. —Cited per Vaughan Ch. J. Vaugh. 212. in Caſe of Harriſon v. Burwel.

¶ Pecuniary Puniſhment muſt be intended by Way of Commutation of Penance. 2 Inſt. 489.

** By the Words (Church Uncover'd) is intended not only of the Body of the Church, which is Parochial, but alſo of *any Publick Chapel annex'd* to it; but it extends *not to the Private Chapel* of any, *tho' fix'd to the Church*, for that muſt be repaired by him that hath the proper Uſe of it; but as to the firſt the Pariſhioners ought to do it Per Conſuetudinem Notoriam & Approbatam, and the Conuſance thereof is allowed to them by this Act, but the *Chancel* is to be repaired by the Parſon &c. 2 Inſt. 489.

†† Oblationes dicuntur quæcunque a piis fidelibuſque Chriſtianis Offeruntur Deo & Eccleſiæ, ſive Res ſolidæ; ſive Mobiles. 2 Inſt. 489.

‡‡ In Caſe of a Penſion, & pro Rationabili parte Bonorum, both Temporal and Eccleſiaſtical Courts have Juriſdiction. Per Twiſden, Rainsford and Wild. 2 Lev. 128. Hill. 26 & 27 Car. 2. B. R. Trafford v. Trafford.

|||| This Statute of Circumſpecte Agatis was made in 13 E. 1. and is called by that Name, becauſe it begins thus, viz. *The King to his Judges ſendeth Greeting Uſe yourſelves circumſpectly in all Matters concerning the* * Biſhop of Norwich *and his Clergy, not puniſhing them if they* hold Plea in † Court Chriſtian *of ſuch Things as be* meer Spiritual.——* The Biſhop of Norwich is put here only for an Example, but it *extends to all Biſhops* within this Realm. 2 Inſt. 487.——Pl. C. 36. b. in Platt's Caſe.——

† It is called Court Chriſtian, becauſe as in the Secular Courts the King's Laws determine Cauſes, ſo in Eccleſiaſtical Courts the Laws of Chriſt ſhould rule and direct; and therefore the Judges in thoſe Courts are Divines, as Archbiſhops, Biſhops, Arch-deacons &c. And it may be found among the Laws publiſhed before the Conqueſt by King Edgar thus, viz. Celeberrimus autem ex omni Satrapia Conventus bis quotannis agitor, cui quidem illius Dioceſis Epiſcopus & Aldermannus interſunto, quorum alter Jura Divina, alter Humana populum edoceto. 2 Inſt. 488.

Till the Biſhop's Juriſdiction was increaſed by Act of Parliament, he could hold Plea only in Matters Teſtamentary and Matrimonial, but by the Statute De Circumſpecte agatis, and of Articuli Cleri, he may now hold Plea in many other Caſes. 2 Mod. 118. Mich. 28 Car. 2. C. B. in Caſe of Waterfield v. the Biſhop of Chicheſter.—2 Inſt. 487. 537.

(O. e) Eccleſiaſtical Law. *Sentence.*

S. P. Per Archer J. 2 Vent. 43. Paſch. 22 Car. 2. in Caſe of Grove v. Dr. Elliot.

1. **If a Sentence be given by the Ordinary or other Eccleſiaſtical Judge,** it is to be preſumed by the Judges of the Common Law, that it is according to the Eccleſiaſtical Law, and ſo they ought to allow it. **Co. 5 *Cawdry* 7. adjudged.**

Jo. 393. S C. And ſays that the Ch. J. delivered the Opinion of the Court, that the Eccleſiaſtical Commiſſioners might well, for good Cauſe, deprive an Eccleſiaſtical Perſon of his Benefice, as well as the Biſhop or Ordinary; and when the Jury finds that he was deprived, tho' the Special Cauſe does not appear either in the Verdict or Sentence, yet it is good enough.

2. **If the** High Commiſſion deprives a Man **of his Benefice by Force of their Commiſſion, and it is found by Special Verdict that they deprived him** Virtute Liter. Paten. **they being authorized** Secundum formam Statut. Virtute Commiſſionis, **for divers Contempts to the Ordinary; tho' the particular Cauſe is not found, yet it is good, and the Court ought to preſume the Sentence to be well given, as well as if it had been given by the Ordinary; becauſe the** King might before the Statute of 1 El. make Commiſſioners by his Letters Patents to proceed according to the Eccleſiaſtical Law; **and here it appears that this Proceeding was againſt a Spiritual Perſon, and by Eccleſiaſtical Cenſure, ſcil. Deprivation, and not againſt a Man according to the Statute of 1 El. and therefore the Court ought to give Credit to their Sentence, without ſhewing the Cauſe in particular. Trin. 11 Car. B. R. between** *Allen and Naſh*, **adjudged upon a Special Verdict. This concerned one** *Huntley*. **Intratur M. 8. Car. Rot. 508. and this agrees with** *Caudrey*'s **Caſe. Co. 5. 7. and the Court vouch'd the old Book of Entries, Tit. Abbe 1. where it is pleaded to be made by Commiſſion generally. But Nota, that the Court ſeemed that if ſuch Sentence had been** grounded meerly upon the Statute of 1 El. againſt a Layman, **that then the** Cauſe of the Sentence ought to appear to the Court, **by which it might appear to the Court, that the Matter for which the Sentence was given was** within the Juriſdiction of the High Commiſſion.

(P. e) *Of what Effect* it ſhall be in our Law.

Fol. 220.

Cro. J. 463. S. C. —— Roll. R. 191 & 227. Paſch. and Trin. 13 Jac S. C. — 2 Roll. R. 6. Hill. 15 Jac. S. C. —— * The Inſtitution and Induction ſtands good, tho' a Caveat was entered, and the Eccleſiaſtical Court cannot meddle with it. Litt. R. 165. Stevens v. Criſp.

1. **If the Clerk of J. S. be admitted and inſtituted, and after the Clerk of J. D. is Admitted, Inſtituted and Inducted, which is void, becauſe the Church was full before, and ſo this a** Super Inſtitution, **and after** the Inſtitution of the Clerk of J. S. is ſentenced to be Irrita & Nulla, **(becauſe he was inſtituted contrary to a** *Caveat **entered, admitting this to be a good Cauſe) yet it ſhall** not ſo relate to make the Inſtitution **and Induction** of the Clerk of J. D. good ab Initio, which was void before. **Hil. 15 Jac. B. R. between** *Hitching and Glover* **adjudged; for otherwiſe by ſuch Means a Purchaſer may be utterly defeated of his Temporal Inheritance, becauſe this Sentence may be after 6 Months; for then he is without Remedy.**

2. **If a Layman be admitted, inſtituted and inducted to a Benefice, and** after 6 Months **he is** deprived, becauſe he is a Layman, and a Sentence of Nullity **of his Admiſſion, Inſtitution and Induction, yet it ſhall** not **ſo** relate to make a Title of Lapſe to the Ordinary; for otherwiſe

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otherwiſe by ſuch Means the temporal Inheritance may be taken away. D. 3 El. 294. adjudged.

(Q. e) *Clergy. Privileges.*

ſee Com. Dig. tit. Eccleſiaſtical Perſons (D).

1. Rot. Parl. 15 E. 3. N. 19. THE Clergy prayed that they ought not to be taken nor impriſoned **without Cauſe or Proceſs of Law by the Miniſters of the King** by his Commandment, againſt the Law **and Uſages of the Land: To which the King anſwered, that his Intention is not to do contrary to the Law, but if any is taken by Command of the King, it is done for juſt Cauſe by** the Ordinance made in the Parliament of Northampton **&c. Such Petition by them made 15 E. 3. N. 21. againſt Impriſonments made of them by the Juſtices.** Prynne's Cott. Rec. Abr. 32. N°. 19.

2. Rot. Parl. 15 E. 3. N. 22. 30. **The Clergy** complain, **that when it is returned that a Clerk has** no Lay-fee **in his Bayliwick, immediately a** Capias **is awarded,** where they ought to ſend a Writ to the Biſhop his Ordinary, **to cauſe him to come; and when any Clerks are condemned before them for any Sum for any Cauſe, the Juſtices command to levy the ſaid Sum, without ſending to the Biſhop his Ordinary, by which Commandment the Lay Miniſters enter the Fee of Holy Church, and the Goods and Chattels &c. To which the King anſwered, The Proceſs aforeſaid is allowable by the Law of the Land, and has been Time whereof Memory &c. And it is not the Intention of the King, that any Layman enter the Fee of Holy Church againſt the Privileges and Franchiſes thereof.** Prynne's Cott. Rec. Abr. 32. N°. 22 & 33. N°. 30.——If a *Scire facias* be brought upon a Recognizance, or upon a Judgment in a Writ of Annuity, and the *Sheriff returns* ſhall have a or ſhews no to the Biſhop to

that the Defendant is *Clericus Beneficiatus nullum habens Laicum Feodum* &c The Plaintiff Writ to the Biſhop of the ſame Dioceſe, to warn the Defendant; and if he appears not, Matter wherefore Execution ſhould not be granted, then a Writ ſhall be awarded to levy Execution de Bonis Eccleſiaſticis. Gibſ. Cod. 17.

In an Action of *Account* &c. the Body of a *Clergyman ſhall not be arreſted by Capias*, but the Sheriff can only return Quod Clericus eſt Beneficiatus &c Gibſ. Cod. 15.——Nor upon Statute Staple or Statute Merchant; for which Purpoſe there is not only the Clauſe in the Writ, Si lienis ſit, Regiſter, fol. 146. 147. but a Special Writ, forbidding the Sheriff to arreſt him; or if he be taken by ſuch Proceſs, a Writ is provided for his Diſcharge. Gibſ. Cod. 15.

3. Rot. Parl. 45 E. 3. N. 15. **Becauſe in this preſent Parliament it was ſhewn to the King, by all the Lords and Commons of England, that the Government of the Realm has long been made by People of Holy Church, which are not juſtifiable in all Caſes, by which great Miſchiefs and Damages have happened in Time paſt, and more might happen in Time to come, in Diſheriſon of the Crown, and great Prejudice of the ſaid Realm, by diverſe Cauſes which one might declare, they** pray that Lay-people and no other be choſen Chancellor, Treaſurer, Clerk of the Privy Seal, Barons of the Exchequer, Chamberlains of the Exchequer, Comptroller, and all other Great Officers and Governors of the Realm. **Anſwer, The King will ordain upon this Point as to him ſhall ſeem beſt by the Advice of his good Council.** Fol. 221. Prynne's Cott Rec. Abr. 132. No. 15.

4. Beſides the many Confirmations of the Great Charter in Parliament, (which included a Confirmation of the Rights and Liberties of the Church and Clergy) and beſides other general Confirmations of the Rights of the Clergy, in Conjunction with thoſe of the Laity, there have been divers Acts and Clauſes, eſpecially in Favour of the Clergy. Accordingly divers of our Kings before the Conqueſt (particularly *Edward the Elder*, *Edgar*, *Canutus*, and *Edward the Confeſſor*) begin their Laws with ſpecial Proviſions for the Liberties of the Clergy, of which therefore the Uſage ſince is only a Continuance. And 'tis obſervable, that

that many of the Confirmations were made at the ſpecial Requeſt of the Commons in Parliament, whoſe Petitions frequently began with ſuch a general Clauſe, in Favour of the Church and Clergy. Gibſ. Cod. 5. and ſee Ibid. to pag. 22.

(Q. e. 2) * *Ordinary*, and *Power of the Ordinary*.

* In ſome Acts of Parliament we find the Biſhop to be called Ordinary, and ſo taken at the Common Law, as having ordinary Juriſdiction in Cauſes Eccleſiaſtical, albeit in the Civil Law, whence that Word (Ordinarius) is taken, it ſignifies any Judge authorized to take Cognizance of Cauſes Proprio ſuo Jure, as he is a Magiſtrate, and not by Way of Deputation or Delegation. The Word (Ordinary) doth chiefly take Place in a Biſhop and other Superiors, who alone are univerſal in their Juriſdictions; yet under this Word are compriz'd alſo other Ordinaries, viz. Such as to whom ordinary Juriſdiction doth of Right belong, whether by Privilege or by Cuſtom. Godolp. Rep. 23. cap. 3.]

1. THE Ordinary himſelf, without any Canon or Cuſtom, cannot command any Layman to obſerve any new Ceremony in the Church.

2. As if the Ordinary commands, that no Feme after ſhe has had a Child, ſhall be Churched, if, when ſhe comes within the Church-door, ſhe does not kneel down, and make her Orizons towards the Eaſt, and alſo come in a Vail, this Command is not lawful, becauſe there is not any Cuſtom ſince the Reformation, nor any Canon for it; and alſo the Manner of Churching is ordained by the Book of Common Prayer, which is confirmed by the Statute of 1 El. and the Ordinary of himſelf has not any ſuch Power to impoſe ſuch new Ceremonies upon the Laiety. P. 20 Ja. B. R. in one *Shipdam*'s Caſe, the Wife of an Alderman of Norwich, who was excommunicated by the Chancellor there Ex Officio; reſolved by Lee and Chamberlain, contra Houghton, and Day given why Prohibition ſhould not be granted. But it was ſtay'd, becauſe it was certified by diverſe Biſhops to be the common Cuſtom of the Church of England.

3. It was agreed that the *Ordinary* in his Viſitation, *ſhall make the Pariſhioners ſuſtain their Bells, Ornaments &c.* Br. Depoſition, pl. 2. cites 11 H. 4. 12.

(R. e) * Depoſition. And what ſhall be *Cauſe to depoſe*.

Fol. 222.

*Deprivation *is an Eccleſiaſtical Cenſure*, by which a Clergyman is deprived of his Benefice. *Degradation is* an Eccleſiaſtical Cenſure, whereby a Clergyman is deprived of his Orders. It is otherwiſe called Depoſition. A Sentence may not only be given for this Purpoſe, but the Clerk may be ſolemnly ſtripp'd of his Clerical Habit. Wood's Inſt.

1. † IF an Abbot aliens his Land which he has in Right of the Houſe, he ſhall be ‡ depoſed as a Dilapidator Domus. 20 H. 6. 46. || 9 E. 4. 34. adjudged accordingly 29 E. 3. 16.

†S. C. cited 9 Rep. 98. b. Trin. 13 Jac. in Bagg's Caſe.—S. C. cited 11 Rep. 72. b. Paſch. 13 Jac. in Magdalen College's Caſe, cites 2 H. 4. 3. b. and 11 H. 6. 35 E. 1.—‡ Br. Depoſition &c. pl. 4 cites S. C.

|| *Dilapidation*, by the Opinion of Lord Coke 3 Inſt. 204. is a good Cauſe of Deprivation; but ſome think the Authorities he cites in the Margin do not prove it, viz. 29 E. 3. 16. Where it is true there is not one Word to that Purpoſe. And 3 H. 4. 3. is only the Opinion of Serjeant Tyrwhit, where Thirning Ch. J. is of Opinion, that if a Biſhop, Archdeacon &c. committed Waſte in cutting Wood which they had in Right of the Church, they were not puniſhable at Common Law; and then demands of the Bar how the Party could be puniſhed in the principal Caſe? Whereto Tyrwhit anſwers, He ſhall be depos'd as a Dilapidator of his Houſe; and Thirning replies, Let that be as it will, (i. e. by Common Law) yet by the Law of the Land he is not puniſhable. Notwithſtanding which I think clearly, that at

at Common Law an Action of Waſte lay for Dilapidations in Eccleſiaſtical Houſes and Buildings; and that therein the Place waſted was recoverable, which was Tantamount to a Deprivation. Watſ. Clerg. Law 54. 55.

And in the 9 E. 4. 34. It is held per Moile J. that if a *Son gives an Abbot* &c. 10 l. *to pray for the Soul of his Father*, and *he ſpends the Money*, he ſhall not be deprived, becauſe he received the Gift in Jure Proprio (or in Jure Perſonæ) but if he *alien'd* &c. *any of the Abbey Lands*, he might be deprived; for thoſe he had in Jure Domus. And it ſeems to me there is the like Reaſon for a Deprivation, where Waſte is done in Houſes or Lands held in Jure Eccleſiæ. Watſ. Clerg. Law 55.

Tho' in Equity Deprivation may well belong to Dilapidators, yet that it hath ever been inflicted, appears not by any Thing that is alleged either out of the Books of Common or Canon Law, which ſpeak only of *Alienations*. Gibſ. Cod. 1116.

2. Before the Statute 18 El. cap. 7. **if an Incumbent had been** convicted by Verdict of Homicide, **and could not purge himſelf of it, this had been Cauſe of Deprivation. Trin. 15 Ja. B. R. between** *Serle and Williams*, **Per Curiam; for he was** Criminoſus. Hob. 288 to 294. S. C. adjudged.—Cro. J. 430. S. C. by Name of Searl's Caſe.

3. But **otherwiſe it had been if he** had purged himſelf thereof, **as was agreed in the ſame Caſe.**

4. But now **tho' the** Purgation be taken away by 18 El. cap. 7. **yet the Crime remains, and the Conviction by Verdict of Homicide ſhall bind him, and ſo he may be deprived for it. Tr. 15 Ja. B. R. between** *Serle* **and** *Williams*. **Reſolved per totam Curiam, and Prohibition denied. Contra, Mich. 27, 28 El. B. Rotulo. 2574. between** *Nichols* **and** *Chaſe*. **Prohibition denied in ſuch Caſe.**

5. **If a Parſon** ſpeaks againſt the Book of Common Prayer **eſtabliſhed by the Statute of** 1 El. **This is good Cauſe of Deprivation by the Eccleſiaſtical Law, without any Aid of the ſaid Statute; for he who ſpeaks againſt the Peace and Quiet of the Church is not worthy to be a Governour of the Church. Co. 5.** *Cawdry's* **Caſe 5 b. adjudg'd. And ſame Caſe, 37 El. B. R.** *Cawdry* **and** *Acton*, **tho' it was objected that it was but** Malum Prohibitum. **And this Power of Deprivation is not taken away by the ſaid Act from the Ordinary for the firſt Offence being in the Affirmative. And alſo there is an expreſs Proviſo which excepts it. Co. 5.** *Cawdry* 5. **Adjudged.**

6. By the Common Law there are *two Sorts of Degrading*; one *Summary*, by Word or Sentence only; and the other *Solemn*, by diveſting the Party degraded of thoſe Ornaments and Rights which are the Enſigns of his Order or Degree. Gibs. Cod. 1104.

7. The *King without Parliament may make Orders and* Conſtitutions *for the Government of the Clergy*, and may deprive them if they obey not. Cro. J. 37. at an Aſſembly of all the Judges, and of the Archbiſhop of Canterbury, Biſhop of London, and divers of the Nobility. S. P. Mo. 755. pl. 1043. 2 Jac. in the Star-Chamber.

8. * *Hereſy*, *Schiſm*, *Irreligion*, *Perjury*, and *Excommunication* are good Cauſes to deprive a Clerk; ſo of *Homicide*, if he be attainted and not pardoned; otherwiſe, if pardoned; for Pardon reſtores him to the Benefit of Law. Jenk. 259. pl. 55. cites Hob. Searle's Caſe. * Dal. 51. pl. 19. Per Bendloes.]

9. It was reſolv'd, that if Biſhop, Archdeacon, Parſon &c. *abates all the Trees*, this is good Cauſe of Deprivation. 11 Rep. 98. b. Trin. 13 Jac. B. R. in Bagg's Caſe; and cites 2 H. 4. 3. b. accordingly.

10. Where a *Statute makes it a Part of a Biſhop's Office to tender Oaths* on Ordination of any Perſon, if the Biſhop *diſobeys* it is good Cauſe of Deprivation; and then the Metropolitan may proceed againſt him for doing contrary to the Duty of his Office, but not to puniſh him as for a Temporal Offence. 12 Mod. 239, 240. Biſhop of St. David's v. Lucy.

11. *Miſapplying Revenue* is Cauſe of Deprivation. 12 Mod. 240. Mich. 10 W. 3. Biſhop of St. David's v. Lucy.

Fol. 223. (S. e) * *Guardian of the* † *Spiritualties.* The Guardian of the Spiritualties. *Who is* of Common Right.

* The Power and Juriſdiction of this Office in the Church is very ancient, and was in Uſe before the Time of E. 1.

1. **Of Common Right** the Dean and Chapter is **Guardian of the Spiritualties** of the Metropolitan **in Time of Vacation.**

This Eccleſiaſtical Office is in Being immediately upon the Vacancy of an Archiepiſcopal See, as when a Biſhoprick happens to be vacant. Godolp. Rep in the Introduction 9.

† Spiritualties are all Manner of Juriſdictions of Courts; As to grant Adminiſtrations, to prove Wills, to grant Licences to marry &c. Sav. 52. Paſch. 25 Eliz. Anon.

Of Common Right by the Common Law, the Dean and Chapter, Sede vacante of the Biſhoprick, is Guardian of the Spiritualties,

2. Of inferior Biſhopricks **in Time of Vacation** the Dean and Chapter of the See **of Common Right is Guardian of the Spiritualties, and not the Metropolitan. Contra, 31 H. 6. 10. Admitted, Dub. 17 E. 3. 23. b. And there it is ſaid by Stouf, That in Time of R. 1. and always before, the Metropolitan was Guardian till the Time of H. 3. and then by Default Compoſition was taken for it.**

as appears T. P. 17 E. 3. 23. but now the Archbiſhops have uſed to have this by way of Compoſition, as Great Lords will incroach all into their own Hands. Per Coke, Ch. Juſt. But by Doderidge every Archbiſhop is Guardian of the Spiritualties of all the Biſhops within his Province, but ſede Vacante of his own Dioceſe the Dean and Chapter thereof is Guardian of the Spiritualties. Coke ſaid, that this commenced by way of Compoſition, but that originally it was not ſo, but the Dean and Chapter was Guardian. But Doderidge ſaid, It does not appear ſo by our Books, no Mention being made of any ſuch Compoſition, but that the Guardian of the Spiritualties is to be according to the Difference between a Province and a Dioceſe. 3 Bulſt. 176, 177. Paſch. 14 Jac. in the Caſe of Grange v. Denny.

In a Prohibition the Archbiſhop pleaded a Preſcription,

3. 5 E. 2. **Quare Impedit. 165. admitted, that during the Vacancy of the** Biſhoprick of Durham the Archbiſhop of York is **Guardian of the Spiritualties.**

That he and his Predeceſſors have Time out of Mind been Guardian to the Spiritualties of the Biſhoprick of Durham, ſede Vacante; and Iſſue was joined thereupon, and tried at the Bar this Term. Hale ſaid, De jure Communi, the Dean and Chapter were Guardians of the Spiritualties duting the Vacancy as to Matters of Juriſdiction; but for Ordination they are to call in the Aid of a Neighbouring Biſhop, and ſo is Linwood. But the Uſage here in England is, that the Archbiſhop is Guardian of the Spiritualties in the Suffragan Dioceſe, and therefore it was proper here to join the Iſſue upon the Uſage. There was much Evidence given, That anciently during the Vacancy of Durham the Archbiſhop had exerciſed Juriſdiction, both Sententious and other, as Guardian of the Spiritualties; But ſince H. 8th's Time it had been for the moſt Part adminiſtred by the Dean and Chapter. And the Verdict was here for the Dean and Chapter. 1 Vent. 225. Mich. 24 Car. 2. B. R. The Dean and Chapter of Durham v. the Lord Archbiſhop of York.

4. 23 E. 1. **Rot. Claus. Memb. 4.** Prior de Eccleſia Chriſti Cantuar. **Guardian of the Spiritualties in Time of Vacation** of the Archbiſhoprick.

5. **Of the Archbiſhoprick of Canterbury** the Dean and Chapter is **Guardian of the Spiritualties in Time of Vacation.**

Where the *Archbiſhoprick of York is void*, the *Metropolitan ſhall have the Spiritualties, and the King the Temporalties*

6. Of the Archbiſhoprick of York the Dean and Chapter is **Guardian of the Spiritualties in Time of Vacation, and not the Archbiſhop of Canterbury, becauſe it is a diſtinct Province, and not ſubordinate to the Archbiſhop of Canterbury. Contra, 31 H. 6. 10. Admitted; for there a Parſon of the Province of York had Aid of the Metropolitan, Guardian of the Spiritualties of the Archbiſhop of York in Time of Vacancy of the Archbiſhoprick.**

as of other Biſhopricks, and if Aid be to be had by a Parſon of the Archbiſhop of York at that time, he ſhall have it of the Metropolitan; And ſo ſee that Canterbury is a more High See than York, and it ſeems that at that Time he may commit the Adminiſtration. Br. Ordinary, pl. 22. cites 31 H. 6. 10.

7. The

7. The *Church*, when *Diſdioceſan'd by Death, Tranſlation*, or otherwiſe, *or* Quaſi Viduata, *whilſt the Biſhop is employed about Tranſmarine Negotiations* in the Service of the King or Kingdom, the Law takes Care to provide it a Guardian Quoad Juriſdictionem Spiritualem, during ſuch Vacancy of the See, or remote Abſence of the Biſhop, to whom *Preſentations* may be made, and by whom *Inſtitutions*, *Admiſſions* &c. may be given; and this is that Eccleſiaſtical Officer, whether he be the Archbiſhop, or his Vicar General, or Deans and Chapters, in whomſoever the Office reſides, him we commonly call the Guardian of the Spiritualties. Godolph. Rep. in the Introduction, pag. 9. Latch. 237. S. C.

See Aid of a Common Perſon (Y) pl. 3. 4. 5.— (Z) pl. 1.

(T. e) Guardian of the Spiritualties. *What* Thing *he may do.*

1. THE Guardian of the Spiritualties may Admit and Inſtitute. 17 E. 3. 23. S. P. Arg. Lat. 35. 237. in Caſe of Evans v. Aſcough.

2. 2 E. 1. Rot. Pat. Memb. 5. The King preſented to the Guardian of the Spiritualties of the Archbiſhoprick of Dublin in Ireland, Sede vacante, for a Church in Ireland.

3. The Guardian of the Spiritualties ſhall try Baſtardy. 41 Aſſ. 29. adjudged. Trial (U.) pl. 8. and (Z) pl. 2.

4. 22 E. 1. Rot. Clauſo Memb. 11. Dorſo. Letters directed to all the Biſhops to make Orizons for the Journey of the King into France, and in the Vacancy to the Guardian of the Spiritualties.

5. 23 E. 1. Rot. Claus. Memb. 4. Prior Eccleſiæ Chriſti Cantuar. Guardian of the Spiritualties, in Vacancy of the ſame Archbiſhoprick, had a Felon delivered to him.

6. *Debt lies againſt* the Guardian of the Spiritualties, *as Ordinary* in the Time of Vacation. Br. Ordinary, pl. 24. cites 17 E. 2. and Fitzh. Brief 822.

7. The Guardian of the Spiritualties ſhall try the Iſſue of *Able or Not Able* in Quare Impedit between the Plaintiff and the Biſhop, where the Archbiſhop is dead and the See void, and the Biſhop refuſed the Clerk. 40 E. 3. 25. b. pl. 32. Daubeney v. the Biſhop of R.

8. Guardian of the Spiritualties *cannot confirm a Leaſe.* Per Noy Arg. Palm. 461. Trin. 3 Car. B. R. in Caſe of Evans v. Aſcough, cites 7 H. 4. 97. Latch. 237. S. C.

9. 25 *H.* 8. *cap.* 21. *S.* 16. Enacts that *if the Archbiſhoprick of Canterbury be void, then ſuch Manner of* Licences, Diſpenſations, Faculties, *Inſtruments, Reſcripts, and other Writings, which may be granted by Virtue and Authority of this Act, ſhall (during the Vacation of the ſame See) be had, done and granted* under the *Name and* Seal of the Guardian of the Spiritualties *of the ſaid Archbiſhop for the Time being, and ſhall be of like Force and Effect as if they had been granted under the Name and Seal of the Archbiſhop.* The Guardians of the Spiritualties have all Manner of Juriſdiction of the Courts, as the *Power of granting Licences* and *Diſpenſations, Probate of Wills, Adminiſtrations* &c. during ſuch Vacancy, and of Admitting and *Inſtituting Clerks* preſented to them; but they *cannot* (as ſuch) *Conſecrate* or *Ordain, or Preſent to vacant Benefices.* Wood's Inſt. 27 —— S. P. Godolph. Rep. in the Introduction 9. 10.—S P. Godolp. Rep. 39. 40. cap 4. S. 1. 2. 3.

S. 17. *And if he ſhall refuſe to grant ſuch Licences &c. where by Law they ought to be granted, in every ſuch Caſe the Lord Chancellor of England, or Lord Keeper of the Great Seal, upon Petition and Complaint thereof to him made, may iſſue his Majeſty's* Writ, *directed* to ſuch Guardian *of the Spiritualties*, requiring him *by Virtue of the ſaid Writ*, under a certain Penalty *therein limited by the ſaid Lord Chancellor or Lord Keeper*, to grant *the ſame in due Form of Law*; otherwiſe (*and no juſt and reaſonable Cauſe ſhewn*

ſhewn for ſuch Refuſal) the ſaid Penalty may be incurr'd to his Majeſty, and a Commiſſion *under the Great Seal, iſſued* to two *ſuch Prelates or* Spiritual Perſons as ſhall be nominated *by his Majeſty*, impowering them *by Virtue of the ſaid Act* to grant ſuch Licences *&c.* as were *ſo* refuſed to be granted by the Guardian *&c. as aforeſaid.*

10. The *King preſented to a Prebend then void, the Temporalties being in his Hands ſede vacante*, and *before Inſtitution the King repeals his Preſentation*; Notwithſtanding which the Dean and Chapter being *Guardians of the Spiritualties* ſede vacante, *inſtitute and inſtal the Preſentee.* Afterwards the King reciting that the Preſentee was in Canonice inſtitutus ex ſua Præſentatione, *ratified and confirmed him.* He died Incumbent; in the mean Time *a Biſhop is created.* The King ſhall have the Preſentation again; for he was not in Ex Præſentatione Regis, and conſequently the Confirmation void; and Judgment was given (ut dicitur) for the King. But the Reporter ſays, Quære if it be neceſſary to allege that the Repeal was ſhewn to the Guardians of the Spiritualties before the Inſtitution &c. ſo as they might have Notice thereof, as of a new Commiſſion &c. D. 292. pl. 70. Trin. 12 Eliz. Anon.

11. In a Quare Impedit the Plaintiff recovered, and had *Writ to admit his Clerk directed to the Dean and Chapter, Guardians of the Spiritualties*, the See of the Biſhoprick being then vacant, which is not returnable; and *before Execution of the Writ a Biſhop is created.* It was doubted whether the Authority to execute the Writ be ceas'd in the Dean and Chapter; and it ſeems that upon a Suggeſtion made to the Court of this Matter, Eo quod nihil actum fuit in Breve prædicto, *another Writ may be awarded to the Biſhop*, and may be returnable if it pleaſe the Party &c. D. 350. pl. 19. Paſch. 18 Eliz. Anon.

12. In Caſe of *Deprivation for not reading the Articles of Religion*, as required by Statute, the Notice to the Patron, in Caſe of the See's being vacant, ought to be given by the Guardian of the Spiritualties, to make a Lapſe accrue. D. 379. b. pl. 54. Paſch. 22 Eliz. Anon.

13. It was a great Queſtion upon a Demurrer in Law, If a *Lapſe devolves* to the Ordinary, and within thoſe 6 Months, the *Ordinary is tranſlated* to another Biſhoprick, If the King, or his Metropolitan, ſhall preſent to that Lapſe, in default that the Patron does not preſent. Noy Attorney ſaid, That the Warden of the Spiritualties ſhall preſent, whoſoever he be. Noy 69. Anon. cites Dyer 78. pl. 103.

It ceaſes after he is choſen by the *Conge d' Eſlire.* 8 Rep. 69. in Trollop's Caſe.

14. When the Biſhop is *confirmed*, then the Power of the *Guardian of the Spiriruralties* ceaſes, and he may conſecrate Elects, confer Orders &c. Lat. 246. in Caſe of Evans v. Aſcough.——The Books of Common Law differ much concerning the *Time when the Power of the Guardian* of the Spiritualties *ceaſes*, and that of the Biſhop commences. Some ſay, upon the Election of the Biſhop, others not till Confirmation. And again others, as to all Miniſterial Acts, upon Election; and as to Judicial, upon Confirmation. But as the Matter is underſtood and practis'd at this Day, the Power of the Guardian of the Spiritualties ceaſes *not till Confirmation.* Gibſ. Cod. 132. 133.——Godolp. Rep. in the Introduction, pag. 9. ſays it ceaſes as *ſoon as a* new *Biſhop is conſecrated* to that See that was vacant, *or* otherwiſe *tranſlated*, who needs no new Conſecration.

(U. e) Eccleſiaſtical Courts. High Commiſſion.

Fol. 224.

1. IN the Dioceſs of Sarum, within the Hamlet of Safferton, is a Chapel of Eaſe, which is within the Pariſh of Trowbridge, and in which Chapel the Parſon of Trowbridge had uſed to find a Chaplain to ſay Divine Service for the Inhabitants of the Hamlet, The Parſon of Trowbridge refuſed to find one to ſay Divine Service accordingly; He may be ſued for this before the High Commiſſion; for tho' it be not any of the great Exorbitant Offences, yet this Offence is Publick, and not Private; For he refuſed to celebrate divine Service. P. 6. Ja. B. between *Sir J. Unieux and Paller.* Contra P. 6. Ja. B.

2. A

2. A Parſon may be ſued in the High Commiſſion Court for preaching againſt the *Book of* Common Prayer, and refuſing to celebrate divine Service according to it; For it is a Publick Offence. B. R. *Cheyney and Franklin's* Caſe adjudged. M. 7. Ja. B. Parſon *Mumfield's Caſe.* Per Curiam adjudged.

3. A Man cannot ſue a Contract of Marriage before the High Commiſſioners; Becauſe this is a Civil Cauſe, and from their Sentence no Appeal lies. H. 8. Ja. B. between *Clifford and Huntley.* Reſolved, and Prohibition granted.

4. A Divorce cannot be ſued before the High Commiſſioners, Becauſe it is a Civil Matter, and not criminal, and therefore a Divorce cannot be ſued before them; Becauſe no Appeal can be ſued thereupon they being the higheſt Court; But ought to be before the Ordinary. M. 8. Ja. B. per Curiam, and Prohibition granted accordingly.

5. A Man cannot be ſued in the High Commiſſion for the Profanation of the Sabbath, but ought to be ſued for it before the Ordinary. M. 8. Ja. B. per Curiam.

6. So a Man cannot be ſued there for carrying of Wood upon a Holyday, as St. Luke's Day; But ought to be ſued before the Ordinary. M. 8. Ja. B. *Aulmer's* Caſe. per Cook. In Atmere's Caſe in Q. Eliz. Reign, the whole Court of of Exchequer, judicially, reſolved that the High Commiſſioners could not puniſh any Man for *working on a Holyday*, albeit it be a Matter of Eccleſiaſtical Conuſance, but ought by the true Meaning of the Statute of 1 Eliz. to be puniſhed by the Dioceſan 4 Inſt. 332.

7. So a Man ſhall not be ſued there for Keeping of Open Shop upon a Holyday. M. 8. Ja. B.

8. The Vicar of the Church of D. cannot ſue the Parſon of the ſame Church (who has the Advowſon appropriate) before the High Commiſſioners for a Penſion iſſuing out of the Parſonage, the Parſonage being late Parcel of the Poſſeſſions of a Monaſtery, becauſe this Court was appointed for exorbitant Offences, and not for Meum & Tuum, between Party and Party, and the Statute of 34 H. 8. has ordained that Suits may be for ſuch Penſions in the Court of the Ordinary. M. 5. 5. Ja. B. between *Roper and Bulbroke.* Adjudged per Curiam. Noy 149 S.C. ---S. C. cited Mo. 917. pl. 1306 in *Babington's* Caſe, by Name of Bulwark v. Roper — 12 Rep. 45. S.C. By Name of Sir Anthony Roper's Caſe ſays it was reſolved, That the ſaid Commiſſioners had no Authority, nor Commiſſion in the ſaid Caſe.

9. If one ſues another in the High Commiſſion, for not ſtanding at the Rehearſal of the Creed, but ſitting and ſaying that the Conſtitutions of the Biſhop were not Lege Divina [a Prohibition will be granted] becauſe it is not any Enormous Offence. M. 8. Ja. B. *Jenner's* Caſe. per Curiam. Fol. 225.

10. If a Feme ſues for Alimony againſt her Baron in the High Commiſſio a Prohibition lies, becauſe it is not an Enormous Crime within the Words of the Statute of 1 El. but a Civil Cauſe, which belongs to the Ordinary of the Place where &c. M. 17. Car. B. per Curiam between *Sir Edw. Powell and his Wife, a Prohibition granted. Between *Cloberry* and his Wife Prohibition granted. Between Sir *Edmond Plowden* and his Wife M. 8. Ja. Rot. 912. *Langton's* Caſe M. 8. Ja. Rot. 109. *Multon's* Caſe Hill. 8. Ja. Rot. — *Eurye's* Caſe. M. 4. Car. Rot. 1603. *Stanlye's* Caſe Mich. 4 Car. Hayle's Office, *Luck's* Caſe. And therefore in King James's Time, it was reſolved by all the twelve Judges, That they ought not to hold Plea of Alimony; And upon that, Alimony was left out of their Commiſſion for five Years after. 7 Ja. Rot. 1154. ‡ *Langdale's* Caſe. Prohibition granted. And in B. R. divers impriſoned for Alimony, at leaſt 20, [were] bailed. *Mar. 80. Paſch. 17 Car. S. C. and Banks Ch. J. ſaid Although there are Precedents that the High Commiſſion have held Plea of Alimony, and granted the ſame, yet it was not Law. And altho' Alimony be expreſſed in their Commiſſion, that it does not make it Law if it be not within the Statute of 1 Eliz to which Crawley, Reeve, and Foſter J. agreed; And they all agreed. That they may as well charge my Land with a Rent-Charge, as Grant Alimony out of it. —— ‡12 Rep. 58, 59, 60. Mich. 6 Jac. S. C.

The High Commiſſion Court in Cauſes Eccleſiaſtical, was by Letters Patents, and that by Force and Virtue of the Statute of 1 Eliz. cap. 1. The Title whereof is, An Act reſtoring to the Crown the antient Juriſdiction Eccleſiaſtical &c. the High Commiſſioners might, if they were competent, that is, if they were Spiritual Perſons,

11. The High Commiſſion Court, which was erected in virtue of 1 El. cap. 18. being aboliſhed by Stat. 16. Car. 1 cap. 11. the Extent and Exerciſe of that Authority *are now Matters of mere Speculation*, and Curioſity; and therefore it may only be obſerved, in general, that, *while that Court ſtood, there were many and great Conteſts between it and the Courts of Weſtminſter-Hall concerning the Extent of the Juriſdiction* aſſigned and limited by this Act; The Commiſſioners, on one hand, not confining themſelves to ſuch Crimes as might properly be called Enormous (Hereſy, Schiſm, Polygamy, Inceſt, and Recuſancy) but taking Cognizance of Adultery, Alimony, Defamation, Laying violent Hands on a Clerk, Miſbehaviour of Clergymen in their Functions, and the like, the Cognizance of which, the Judges affirmed to belong, of right, to the ſtanding Eccleſiaſtical Courts, and not to be Enormities within the Meaning of this Statute; alledging further, that the Exerciſe of Juriſdiction, in theſe and the like Caſes, by the High Commiſſioners, would not only prejudice all the Biſhops of England in their Eccleſiaſtical Juriſdiction, but would be alſo grievous to the Subject, who muſt be drawn up from all the remote Parts of the Realm, when, before their own Dioceſan, they might receive Juſtice at their own Doors. Much of this kind is to be met with in the Reports of that Time, particularly in my * Lord Coke; who ſtrenuouſly reſiſted the Encroachments of the High Commiſſion; and he, and the other Judges, reſtrained them, in many Inſtances, by Prohibitions. Gibſ. Cod. 50.

proceed to Sentence of Excommunication What the Power of this Court was, and whether they might in Cauſes Eccleſiaſtical, proceed to Fine and Impriſonment, is at large examined by the Lord Coke in the 4th Part of his Inſtitutes, where he reports the Judgment and Reſolutions of the whole Court of Common Pleas thereon, Paſch. 9 Jac. Reg. upon frequent Conferences and mature Deliberation, ſet down in Writing by the Order and Command of King James, likewiſe whom, and in what Caſes the Eccleſiaſtical Court may examine one upon Oath, or not (there being a penal Law in the Caſe) and whether the Saying, Quod nemo tenetur ſeipſum prodere, be applicable thereunto. Godolph. Rep. 118. cap. 11. S. 14. cites Trin. 13 Jac. B. R. Burroughs, Cox &c. againſt the High Commiſſioners, Bulſtr. Par. 3. —3 Bulſt. 43. to 54. —— * See the 12 and 13 Reports throughout, & 4th Inſt. 324 to 335.

(X. e) *Convocation* of the Clergy. [*Power* of Convening.]

Reſolved. Tr. 8 Ja. That a Convocation cannot *aſſemble* at their Convocation without *Aſſent of the King*. 2. Nor after their Aſſembly *conferr to conſtitute any Canons* without Licence. 3. Nor *execute any*, which, upon Conference, they ſhall conclude upon without Royal Aſſent. 4. *Nor after Royal Aſſent, but with* theſe *four Limitations* 1. That they be *not againſt the King's Prerogative*. 2. *Nor* againſt *the Common Law* 3. Nor againſt any Statute Law. 4. *Nor* againſt any *Cuſtom* of the Realm. And all this appears by the Statute. 25 *H.* 8. 19. and this was but an Affirmance of what was before the ſaid Statute. 12 Rep. 72. Trin. 8. Ja. —— *Orig. is (et)

1. THE Archbiſhop of Canterbury cannot hold a Council for his Province without the King's Licenſe; For ſuch Council held by Hubert Archbiſhop of Canterbury was prohibited by Fitz Peter Chief Juſtice, becauſe he had not the King's Licence; But he would not obey it. Speed. 487.

2. 13. El. 3. Rot. Parl. M. 1. There is a Writ for a Convocation of the Clergy of the Province of Canterbury * at Paul's, and another for the other of York. Vide Statute 25 H. 8. cap. 19. where the Clergy of England acknowledge, that the Convocations of the ſame Clergy is, and always hath been, and ought to be aſſembled only by the King's Writ.

3. The Convocation is under the Power and Authority of the King. 21. E. 4. 45. b.

4. 23 H. 8. cap. 19. Enacts that, The Convocation ſhall be aſſembled by the King's Writs.

5. The

5. The High Court of Convocation is called the Convocation of the Clergy, and *is the higheſt Court Eccleſiaſtical*, where the whole Clergy of both Provinces are either preſent in Perſon, or by their Repreſentatives. They commonly meet and ſit in Parliament-time, *conſiſting of two Parts*, viz. the *Upper-Houſe*, where the Archbiſhops and Biſhops do ſit; *and the Lower Houſe* where the inferior Clergy do ſit. This Court has the *Legiſlative Power* of making Eccleſiaſtical Laws, is commonly called a National Synod, *convened by the King's Writ* directed to the Archbiſhop of each Province for ſummoning all Biſhops, Deans, Archdeacons, Cathedrals, and Collegiate Churches, aſſigning them the Time and Place in the ſaid Writ; But one Proctor ſent for each Cathedral and Collegiate Church, and two for the Body of the inferior Clergy of each Dioceſe may ſuffice. The *higher Houſe* of Convocation, or the Houſe of Lords Spiritual, for the Province of Canterbury *conſiſts of* 22 *Biſhops*, whereof the *Archbiſhop is Preſident*; the *Lower-Houſe*, or Houſe of Commons Spiritual *conſiſting of all the Deans, Archdeacons, one Proctor for every Chapter, and two for the Clergy of each Dioceſe, in all* 166 *Perſons, viz.* 22 *Deans*, 24 *Prebendaries*, 54 *Archdeacons, and* 44 *Clerks*, repreſenting the Dioceſan Clergy. Both Houſes debate and *tranſact only ſuch Matters as his Majeſty by Commiſſion allows* concerning Religion and the Church. The Archbiſhop of York at the ſame time, and in the like Manner, holds a Convocation of all his Province at York, conſtantly correſponding, debating, and concluding the ſame Matters with the Provincial Synod of Canterbury. The *Antiquity of this Court* of Convocation *is very great*, for (according to Beda) St. Auguſtin An. 686, aſſembled in Council the Britain Biſhops, and held a great Synod. The Clergy was never aſſembled or called together at a Convocation by other Authority than by the King's Wait. Vid. Parl. 18 E. 3. nu. 1. Inter Leges Inæ, An. Dom. 727. Godolph. Rep. 98, 99. cap. 11. S. 2.

S. P. Ibid. 586. cap. 41. and ſays, That among the Laws of H. 1. cap. 8. it was anciently called *Church-gemote*. —— S. P. Wood's Inſt. 500. —— In the *Province of York* two Proctors are ſent to the Convocation for every Archdeaconry; but in the Province *of Canterbury*, two only for every Dioceſe. As there are two Houſes of Convocation, ſo there are *two Prolocutors* or Speakers; one of the Biſhops ſometimes in the Upper-Houſe, choſen by that Houſe; another in the Lower-Houſe, choſen there and preſented to the Upper Houſe. The *Archbiſhop is the Preſident*, and *prorogues and diſſolves it* at the Direction of the King. For the Convocation is under the Power and Authority of the King. Wood's Inſt. 500.

See (X. e) pl. 1, 2 in Marg. —— Fol. 226. See Canons.

(Y. e) The Power of the Convocation.

1. **THE Convocation has not any Power to do any thing** to bind the Temporalty. 20 H. 6. 13.

A Convocation (ſays Ld. Coke, 12 Rep. 72.) may make Conſtitutions by which thoſe of the Spiritualty ſhall be bound, (becauſe they all, by Repreſentation, or in Perſon, are preſent) but not the Temporalty. By which it is to be hoped, he did not mean, that when Canons and Conſtitutions are framed by the Eccleſiaſtical Legiſlature about Matters merely Spiritual, and being inforced by Eccleſiaſtical Cenſures for the Improvement of the Diſcipline of the Church, and confirmed by the King as ſupreme Head of the Church, that ſuch Confirmation has not Power enough to bind the Laity. This would look as if the Laity had nothing to be ſaved but their Eſtates, nor the Clergy any thing to do, but to ſave themſelves. Much truer, undoubtedly, is the Doctrine delivered by Vaughan in the Caſe of **Grove and Elliot.** The Convocation, with the Licence and Aſſent of the King, under the Great Seal, *may make Canons for Regulation of the Church*, and that *as well concerning Laicks as Eccleſiaſticks*. All that is required of them in making new Canons is, that they confine themſelves to Church Matters. Upon the ſame Foundation he declares in the Caſe of **Ill and Good**, that a Canon ſo made is the Law of the Kingdom as well as an Act of Parliament. Gibſ. Cod. 974.

2. **The Convocation has no Power** to allow or diſallow the Patents of the King. 20. H. 6. 13. Br. Ordinary, pl. 1. cites S. C.

3. 2 H. 4. **Rot. Parl. N. 24.** a Writ **is granted by the Advice of the Lords Temporal in Parliament** to the Sheriffs of London, **and this is ſubſcribed** per ipſum Regem & Concilium in Parliamento, **by which the Sheriffs are commanded** to burn William Sautre, **who was before** condemned

condemned for a Relapſed Heretick by the Archbiſhop of Canterbury, Apoſtolicæ ſedis Legatum, and the other Suffragans, and all the Clergy of the ſaid Province in Concilio ſuo Provinciali Congregat. Juris Ordine.

4. 31 H. 8. cap. 14. The ſix Articles are reſolved and agreed, (being Matter of Religion) by the Aſſent of the King, the Lords Spiritual and Temporal, and other learned Men of his Clergy in their Convocation, and by the Aſſent of the Commons; but **afterwards they are enacted by the King, Lords Spiritual and Temporal, and Commons in Parliament, and** No Mention of the Convocation.

5. 21 R. 2. cap. 2. 12. **Enacted** by Aſſent of the Lords Spiritual and Proctors of the Clergy &c.

See Hereſy &c.

6. 1 El. cap. 1. Proviſo **that thoſe who ſhall have Juriſdiction by Letters Patents ſhall not have Power** to adjudge Hereſy **but in ſuch Caſes which have been before adjudged &c. Or** ſuch as hereafter ſhall be ordered, judged, and determined to be Hereſy by the High Court of Parliament of this Realm, with the Aſſent of the Clergy in their Convocation.

7. **The Convocation hath Power** to make Holydays or Faſting Days. 20 H. 6. 13.

S. P. per Coke Ch. J. but they ought to be according to the Law and Cuſtom of the Realm. Noy. 139. cites 20 H. 6. 14. and 21 E. 4. 46.

8. **The Convocation hath Power** to make Conſtitutions Provincial, by which thoſe of Holy Church ſhall be bound. 20 H. 6. 13.

See Preſentation (M. a. 2)

9. 13 El. cap. 12. **Ordains,** That the Articles agreed by the Archbiſhops and Biſhops of both Provinces and all the Clergy in the Convocation held at London &c. ſhall be read by the Incumbent, or otherwiſe he ſhall be **ipſo facto** deprived.

10. 18 E. 1. **Rot. Pat. Memb. 24. Rex** miſit Rogerum **extraneum & Hugonem Fil. Ottonis Seneſcal. Hoſpitii Regis Archiepiſcopo Cantuar. & omnibus Epiſcopis & aliis Prælatis apud London Convocatis** ad appellandum pro Rege, ne in Concilio & **Congregatione illa** contra Coronam & **Dignitatem noſtram** aliquid ſtatuere præſumant; **Mandantes eis quod ſicut Baronias veſtras (quas de nobis tenetis) diligitis, nullo modo præſumant Concilium tenere de aliquibus, quæ ad Coronam vel Perſonam noſtram vel ſtatum Conſilii noſtri pertinent; & Sciatis pro certo, quod ſi feceritis, nos inde ad vos & Baronias veſtras capiemus; Alſo he commands them Ad Exhortandum & Monendum vos & Clerum veſtrum, ut nobis &c. Subventionem faciatis Liberalem.**

Their Juriſdiction was to deal with *Hereſies, Schiſms, and other meere Spiritual and Eccleſiaſtical Cauſes*, and therein they did proceed *Juxta Legem Divinam & Canones* Sanctæ Eccleſiæ; And as they could never aſſemble together of themſelves, but were always *called together by the King's Writ*, ſo were they oftentimes commanded by the King's Writ to deal with nothing that concerned the King's Laws of the Land, his Crown and Dignity, his Perſon, or his State, or the State of his Council or Kingdom. 4 Inſt. 322. cap. 74.

* Fol. 227.

11. 9 E. 1. **Rot. Pat. Memb. 6.** Inhibitio **Archiepiſcopo & omnibus Epiſcopis & aliis Prælatis apud Lambeth conventuris,** ne * aliquid ſtatuant in Præjudicium Regis, **Coronæ vel Dignitatis ſuæ.**

12. **Rot. Pat. 25 E. 1. Part 1. Memb. 9.** Hugh le Diſpenſer [was] aſſigned to forbid **in the Name of the King to all the Clergy aſſembled at London** at this time, that they do not make **nor ordain** any Ordinance which may turn in Prejudice of the King or his Miniſters, or thoſe of his Peace.

Pariſh Clerks were heretofore Real Clerks;

13. **In 44 E. 3. in a Synod, a** Canon **was made,** that the Parſon of every Church **in England** ſhould appoint the Clerk of the Pariſh.

ofwhom every Miniſter had at leaſt one to aſſiſt under him, in the Celebration of Divine Offices; And notwithſtanding he was maintained by the Pariſhioners, he was appointed to the Office by the Miniſter, as well

well according to the Conſtitution of Archbiſhop Boniface 45 H. 3. in the Year 1261, as by the Cuſtom of the Realm. Gibs. Cod. 240.

14. In another Synod held 1603. a Canon was made to the ſame Effect, and yet this does not take away any Cuſtom where the Pariſhioners or Churchwardens have uſed to appoint the Clerk; Becauſe it is Temporal, which cannot be altered by a Canon. Mich. 24 Ja. B. R. *Walpole v. Gale*, per Curiam, and by the Counſel agreed, and Prohibition granted by Conſent to try the Cuſtom.

Since the making of this Canon, the Right of putting in the Pariſh Clerk has often been conteſted between Incumbents and Pariſhioners for maintaining the Authority of the Canon, in Favour of the Incumbent, againſt the Plea of Cuſtom in Behalf of the Pariſhoners; and Prohibitions have been prayed and always obtained. Gibs. Cod. 240, 241.

[For more as to Clerks of Pariſhes, ſee Clerk of a Pariſh.]

15. Rot. Parl. 18 E. 3. N. 12. The Commons pray, That no Petition made by the Clergy, which may be in * Decreaſe or Damage of the People, or of the Commonalty, be granted till it be tried by the King and all the Council, that without Damage of the † Great Men, or of the Commons ‡ it may be well obſerved. Anſwer, It pleaſes the King and his Council that ſo it ſhall be.

* Orig. is (Decres.) † Orig. is (Grants.) ‡ Orig. is (Bonement le puis tener.)

16. Rot. Parl. 18 E. 3. N. 23. The Petitions of the Clergy, and Anſwer of the King, and granted by him under his Seal.

17. 2 H. 4. cap. 5. It is recited that the Lollards preach &c. to the great Peril of the Souls of the People, and of all the Realm of England, as now plainly is found and ſufficiently proved before the Reverend Father in God the Archbiſhop of Canterbury, the Biſhops and other Prelates, Maſters of Divinity, and Doctors of Canon and Civil Laws, and a great Part of the Clergy of the ſaid Realm, eſpecially aſſembled for this Cauſe. (It ſeems it was a Convocation in which the Civilians were, who are Laymen.

18. The Juriſdiction of the Convocation is only touching *Matters meerly Spiritual and Eccleſiaſtical*, wherein they proceed Juxta Legem Divinam & Canones Sanctæ Eccleſiæ. Godolph. Rep. 99. cap. 11. S. 2.

The Juriſdiction of the Convocation may be exerciſed, in making Canons with the King's Licence and Aſſent, in Examining and Cenſuring Heretical or Schiſmatical Books or Perſons. But then an *Appeal lies to the King in Chancery, or to his Delegates*, as hath been lately reſolved. It is the Legiſlative Power in the Church, and the Canons that are made concerning the Church with the Royal Aſſent, bind the Clergy, but not the Laity. Wood's Inſt. 500.

19. Serjeant Hawkins ſays, It is certain that the Convocation *may declare what Opinions are Heretical*; but that it has been queſtioned of late, Whether they have Power at this Day to *Convene and Convict the Heretick*. Hawk. Pl. C. 4. cap. 2. S. 3.

(Z. e) The *Privileges* of the Convocation.

1. 8 H. 6. cap. 1. ALL the Clergy from henceforth to be called to the Convocation by the King's Writ, and their * Servants and Familiars ſhall for ever hereafter Uſe and Enjoy ſuch Liberty and Immunity in Coming, Tarrying and Returning, as the Great Men and Commonalty of the Realm of England, called or to be called to the King's Parliament, have Uſed, or ought to Have and Enjoy.

In the Journals of the Houſe of Lords, we find ſeveral Applications to their Lordſhips for Redreſs, in Caſes where this Liberty of the Convocation-Clergy hath been invaded, which their Lordſhips have accordingly granted. Gibſ. Cod. 975.——* S. P. Godolph. Rep. 99. cap. 11. S. 2.

(A. f) Biſhop and * *Temporalties*. For what Cauſes the Temporalties ſhall be *ſeiſed*.

Fol. 228.

* Temporalties are all thoſe Things which Biſhops have by Livery of the King, as Caſtles, Manors, Lands, Tenements, Parſonages, Tithes, and all other Certainties of which the King is anſwered during the Vacation. Savil 52. Paſch. 25 Eliz. Anon.——† S. P. Br. Reſeiſer, pl. 9. cites 21 E. 3. 3.

1. † IF a Biſhop incumber the Church after a Prohibition of Ne Admittas deliver'd to him, and thereof found Guilty in Quare Incumbravit, yet his Temporalties ſhall not be ſeiſed for this. 21 E. 3. 13. Curia. But quære.

Br. Contempts, pl 18. cites 38 Aſſ. 22. S. C.

2. If a Prior be attainted in an Attachment upon Contempt, for Not admitting a Varlet to his Corody, his Temporalties ſhall be ſeiſed. 38 Aſſ. adjudged.

Br. Contempts, pl. 19. cites S. C.

3. If a Biſhop be attainted in an Attachment upon a Prohibition, his Temporalties ſhall be ſeiſed. 21 E. 3. 3. 60. b. adjudged.

——Br. Quare Incumbravit, pl. 1. cites S. C.——Br. Reſeiſer, pl. 9. cites S. C.

S. P. Br. Reſeiſer, pl. 11. cites 24 E. 3. 23.

4. If a Biſhop be found a Diſturber in a Quare non Admiſit brought by the King, his Temporalties ſhall be ſeiſed. 23 E. 3. 22.

——S. P. Br. Quare Impedit, pl. 97. cites 24 E. 3. 55.——Br. Forfeiture de Terre, pl. 106. cites S. C. *And* the King ſhall have the Profits till he reſtore to him the Temporalties, as it ſeems in a Quare Impedit.

5. 10 E. 1. Rot. Pat. Memb. 3. Mandatur quod omnes Terræ & Tenementa Epiſcopi London capiantur in manus Regis & inde faciend' prout Rex injunxerit Occaſione cujusdam Tranſgreſſionis enormis Nobis per ipſum Epiſcopum factæ.

6. If a Biſhop be attainted in a Treſpaſs againſt the Peace, his Temporalties ſhall be ſeiſed; for he ſhall not be taken as another Man, becauſe he is a Prelate. 29 E. 3. 42.

See (E. f.) pl. 7. The Caſe of the Abbey of St. Edmondsbury. 21 E. 3. 60.

7. M. 19 E. 3. Rot. 114. Epiſcopus Norwich implacitatur per Regem for proceeding in the Eccleſiaſtical Court againſt the Abbot of St. Egid. againſt the Privilege of the ſaid Abbey, granted by the King before the Conqueſt &c. and the Defendant found Guilty by Jury, it is adjudged that the Temporalties of the Biſhop ſhall be ſeiſed; and that in ſuch Caſes for Contempt to the King, the Bodies of the Biſhops caperentur prout per diverſa Recorda Progenitorum Regis liquet. Tamen quoad hoc dies data eſt.

8. In *Eſcape againſt the Abbot of Weſtminſter of a Clerk attaint*, it was prayed that the Temporalties ſhould be ſeiſed; to which it was not anſwered, therefore quære. Br. Reſeiſer, pl. 17. cites 21 Aſſ. 12.

If the Ordinary *challenges a Clerk who cannot read*, he ſhall make Fine, and if he * *refuſes a Clerk who can read*, he ſhall make Fine; and if he *ſuffers Purgation* to be made by a Clerk *contrary to the Common Law*, this is an Eſcape; but the Temporalties of the Ordinary ſhall not be ſeiſed in ſuch Caſes, becauſe by this Statute the Juſtices ſhall aſſeſs a Fine without Seiſing. Br. Ordinary, pl. 12. cites 9 E. 4. 28.——S. P. Br. Clergy, pl. 2. cites 7 H. 4. 41.——* S. P. And he *is not Judge* of the *Priſoner*, nor of his Reading, *but* is [only] *Miniſter*, and the Juſtices are as Judges. Br. Ordinary, pl. 16. cites 7 E. 4. 29.——Ibid. pl. 20. cites 7 H. 4. 41. S. P. But per Gaſcoign, If the Ordinary *challenges one for a Clerk who is No Clerk*, the Court ſhall ſeiſe his Temporalties.——And 2 Inſt. 164 ſays, that anciently his Temporalties were liable to be ſeiſed for ſuch Contempt But ſince this Statute it is held to be fineable only — And 2 Hawk. Pl. C. 360. cap. 33. S. 116. ſays, It ſeems to be generally agreed that he ſhall now be only fined in ſuch Caſe and the like, for *obſtinately perſiſting to return that a Priſoner reads as a Clerk*, or the contrary &c. *againſt the declared Senſe of the Court.*

9. 25 *Ed.* 3. 6. Enacts that *the Biſhops Temporalties ſhall not be ſeized into the King's Hands for a Contempt, but they ſhall pay a reaſonable Fine.*

10. Iſſue

10. Iſſue was taken in Caſe of a Corody, if the *King* was *Patron of a Priory*, (where he had preſented one to the Corody, by reaſon that his Progenitor founded a Chapel there before any Priory was there) or if the Biſhop of E. and his Predeceſſors de tempore have been Patrons there? And the Jury found for the King; for which Cauſe, and becauſe the Priors had *made Elections of Priors there without Licence of the King, to the Diſinheriſon of the King* and his Crown, it was agreed, that the King recover the Patronage, and that the Temporalties be ſeiſed into the Hands of the King for the Diſinheriſon and Contempt, 'till he had made Satisfaction to the King. Br. Preſentation. pl. 39. cites 38 Aſſ. 22.

11. If the *King preſents and his Clerk is in, and after* the King *revokes his Preſentation*, if *the Biſhop does not remove the Incumbent*, the King ſhall ſeiſe the Temporalties. Per Thorp. Br. Ordinary. pl. 23. cites 44 E. 3. 35, 36. Br. Preſentation. pl 6. cites S. C.

12. Where the *King writes to the Biſhop to aſſoil a Man excommunicated* for a Cauſe which does not appear to the Biſhop, *and he does not do it*, the King ſhall ſeiſe his Temporalties. Br. Reſeiſer. pl. 8. cites 14 H. 4. Br. Excommengement. pl 5 cites 14 H. 4. 14. S.C.

13. An Archbiſhop is *attainted of Treaſon*, the King ſhall have the Temralties *in Jure Coronæ*, *not* in Jure *Vacationis*; for he remains Archbiſhop until Degradation and Deprivation. Jenk. 210. pl. 44. cites D. 108.

(B. f) What *Profit* the King ſhall have *thereby*.

[1.] **If the King has Judgment to ſeize the Temporalties of the Biſhop for Contempt, he ſhall have** the Preſentation to the Prebend annexed **to the Temporalties which ſhall become void after.** 21 E. 3. 29. **Adjudg'd. Tho' the** King has the Temporalties as a Diſtreſs 'till a Fine made to him **by the Biſhop.** 21 E. 3. 29, 30. **Adjudged.** Br. Reſeiſer. pl. 10. cites S. C. Brooke ſays, and ſo it appears, that by ſuch Seiſin the King has Poſſeſſion, and not only the Profits.— Br. Scire facias. pl. 101. cites S. C. — Br. Seiſin. pl. 9. cites S. C.

2. Quare Impedit by the King of the Advowſon of B. and made Title by the Poſſeſſions of the Abbot of Reading in his Hands; and the Defendant ſaid, that *King H.* Great Grandfather of King J. *granted to the Abbot and his Monks, that he and his Heirs ſhould not meddle with the Poſſeſſion of the Houſe in the Time of Vacation, but that the Prior and Monks ſhould have the Diſpoſition* of them *for their Suſtenance*; and ſaid, that they had *enjoy'd it accordingly*. And the beſt Opinion was, that the Grant is good, and that this Word *(Poſſeſſions) ſhall be taken to be All which they ſhall have in Poſſeſſion*. And Per Chelr. Where a Man demands Franchiſe by Charters of the King before Time of Preſcription, he ſhall not have it otherwiſe than it has been uſed, quod non negatur; and quære the Reaſon of thoſe Words (for their Suſtenance); for *Preſentation to Advowſon is not Suſtenance to them*. Br. Patents. pl. 22. cites 39 E. 3. 21.

3. The Maſter and Fellows of Merton College in Oxford were Patrons of a Benefice within the Biſhoprick of Durham, and the Incumbent died, and the *Church remained void* by *ſix Months*; and afterwards the *Biſhop* was *deprived*. Whether the Collation belong'd to the *King or* to the Archbiſhop of York, *Metropolitan*, or not. Quære. D. 87. b. pl. 103. Paſch. 7 E. 6. The Maſter and Fellows of Merton College's Caſe. Ibid. in Marg. ſays, that in 18 Eliz it was awarde, that it belong'd to the Guardian of the Spiritualties. It ſeems that it is becauſe that it comes by reaſon of the Spiritualties.

Fol. 229.

(C. f) *Visitations. What Persons* may be *visited.*

1. EVERY Spiritual Person is visitable by the Ordinary. Davis 1 Commend. 72. b.

If to a *Priory, or a Dean and Chapter*, the Court seem'd of Opinion

2. If a Rectory has been appropriated to an Abby, the Visitation should cease as to the Rector; for the Abbot was not visitable as Rector for his Doctrine. Davis 1. Proxyes 3. b. 73.

that the Bishop, notwithstanding the Appropriation of the Benefice, might visit to see how the Church was served, Sacraments administred, &c. and might *proceed to Suspension*; but it was clear he could *not deprive* him. 10 Mod. 68 Mich. 10 Annæ. B. R. Dr. Harrison v. Archbishop of Dublin.

3. But all Abbeys and Priories of Common Right, if they were not lawfully exempt, were visitable as to their Rule and Order. Davis Proxyes. 3. b. for they were Religious.

(D. f) Bishop. Visitation.

1. DEAN is visitable de Mero Jure by the Ordinary, for he is Spiritual. D. 10 El. 273.

2. If the Patronage of a Deanry be appointed to the King by a Statute, and that he and his Successors shall nominate him with a Saving of all Rights &c. to Strangers, except the Bishop, and after the King nominates a Dean, he is visitable by the Ordinary notwithstanding the Saving; for this goes to the Possessions, and the Deanry is Spiritual. D. 10 El. 273. 38.

The Ordinary hath in some Cases a Power as to the Person, tho' not to the Place; for if the *Parson of a Donative marries without a Licence or commits any Misdemeanor*, the Ordinary may punish him. Wats. Clerg. Law. 173, 174. —— cites 3 Salk. 140.

3. The Ordinary has Power of Correction of a Parson. 20 H. 6. 46.

4. But not of an Abbot. 20 H. 6. 46.

5. Every Hospital, be it Lay or Spiritual, is visitable. Cook 10. Sutton's Hosp. 31.

6. When the Hospital of St. John of Jerusalem was surrendered and dissolved, and suppressed by the Act of 33 H. 8. and their Possessions vested in the Crown by the Act, yet the Visitation of them did not cease thereby, because their Corporation was not dissolved by it; But when they were Deraigned, and left their Habit, Rule, and Order, for which they were visitable, then the Corporation was utterly dissolved, and upon this the Visitation ceased. Davis Proxyes. 1. b. Agreed.

Fol. 230.

(E. f) What * Person shall visit.

* Wherever there is a Cure of Souls, the Church is visitable either by the Bishop, if it belongs to him; If to a *Layman*, he *must make Delegates*; If to the King, the *Lord Keeper* does it. Per Twisden J. Mod. 12. pl. 34. Mich. 21 Car. 2. B. R. in the Case of Clerke v. Heath.

1. BY the antient Law of the Realm, the King has Power to visit, Reform, and Correct all Abuses and Enormities in the Church. Davis 1. Proxyes 4.

2. By the Statute in Time of H. 8. the Crown was but remitted and restored to its antient Jurisdiction, which was usurped by the Bishop of Rome. Davis 1. Proxyes. 4.

3. H.

3. H. 8. E. 3. B. R. Rot. 97. Episcopus Exon. attachiat. ad respondendum Domino Regi quare exerceret Jurisdictionem in Capella Regia Sanctæ Burianæ in Cornub. &c. bene placitat. ibidem. And Tr. 17. E. 3. Rot. 97. B. R. Gibs. Cod. 237. cites S. C but cites it as in Time of E 1.

4. The King himself shall visit his Free Chapels and Hospitals, and not the Ordinary. Davis. 1. Proryes. 4. 27. E. 3. 85. F. N. B. 42. a. The Lord Chancellor shall execute it for the King. Free Chapels may continue such, in point of Exemption from ordinary Visitation, though the Head or Members receive Institution from the Ordinary This appears beyond Exception from the King's *Presentation* of a Prebendary of the *Free Chapel of Hastings*, made to the Bishop of Chichester, and a *Royal Mandate for Instalment*, reciting the Admission and Institution of the Person Presented; Both which we find in the Register. Gibs. Cod. 237.

If the Bishop attempt to visit an Hospital of Royal Foundation, a *Prohibition is provided* in the Register Fol. 40. b. By the Tenor of which it appears, that De Jure Communi, the Chancellor of England for the Time being had the Right of Visiting all such Hospitals in the Name of the King. Gibs. Cod. 1147.

5. The Donatives of the King are not visitable by the Ordinary Davis. 1. D. & C. of *Ferns*. 46. temp. E. 6. Br. Premunire. 21. 21 Ass. 29. 8 E. 3. Ass. 150. An Incumbent of a Donative of the King's, as he comes to it merely by the King's Letters Patents, he shall not be visitable, nor deprivable, by any Ecclesiastical Authority, but by the Lord Chancellor, or by Commissioners under the Great Seal. 12 Rep. 41. in Nicholas Fuller's Case.

6. The Donatives of the King are properly visitable by the Chancellor. Davis. 1. 46. F. N. B. 42. A. And the King may make a Special Commission to this Purpose. D. 1. 46.

7. The Abbey of St. Edmond's-Bury was of the Foundation of the King, and exempt from every Jurisdiction of the Ordinary, that no Ordinary shall visit there, and after ordained in Parliament, that if the Bishop or his Successors visit against the Ordinance and Foundation, they shall forfeit 30 Talents, and after the Bishop is sued upon a Contempt for visiting contrary to this, and against the Prohibition of the King not to visit, and for this his Temporalties seised, and he forfeited the Talents. 21 E. 3. 60.

8. 8 E. 1. Rot. Claus. Memb. 8. Rex. Vic. Glouc. Præcipimus tibi quod non permittas Wigorn. Episcopum vel Offic. aut alios Ministros suos, Capellanos, Clericos, aut alios Ministros liberæ Capellæ de &c. quæ est de Hæreditate J. S. infra Ætatem, & in Custodia nostra existentis visitare vel Jurisdictionem Ordinariam in eadem libera Capella exercere, aut in ea aliquid contra tenorem Inquisitionis, nuper de Præcepto nostro super hoc &c. attemptare &c. sed in eodem statu in quo fuit die obitus Patris prædicti J. S. manuteneas, protegas & defendas durante Custod. & hoc nullo modo omittas &c.

9. 23. E. 1. Rot. Claus. Memb. 7. Because the Free Chapels of the King are exempt from the ordinary Jurisdiction, which the Dean and Official of London compels them to pay &c. Prohibition. 6. E. 1. Rot. Pat. M. 17. in Schedula annexa. The King recites, Quod cum Ecclesia Omnium Sanctorum de Derby cum Præbendis & aliis Pertinent. suis sint libera Capella Regis, & ab omni Ordinaria Jurisdictione exempta, & Domino Papæ immediate Subjecta &c. & Archidiaconus Derby Jurisdictionem ibi vindicat. Rex mandat quod præfato Archidiacono talem Jurisdictionem vindicanti in nullo obtemperent.

10. If a Hospital be Spiritual, the Bishop shall visit. Co. 10. Sutton's 31. 8 Ass. 29. 8 E. 3. Ass. 150. [So of *Colleges*] Every College has a Visitor, either by Appointment of the Founder, or of the Law, If it be a * Lay one, the Founder, or his Heirs; But if an Ecclesiastical one, then the Bishop of the Dioceſs is. Per Holt Ch. J. Show. 74. Mich. 1 W. & M. Perkins v. --- —— * S. P. Jenk. 270. pl. 88. — It is said, in the Journal of Parliament 3 H. 8. That

11. If a Hospital be Lay, the Patron shall visit it. Co. 10. *Sutton's* 31. 8 Ass. 29. 8 E. 3. Ass. 150.

Houſes relating to Hoſpitals ought to be *reformed in Convocation*; But tho' the Rule of the Canon is that Hoſpitals, de Jure Communi, were under the Inſpection of the Biſhop; And tho' alſo the Order of the Lords in Parliament implies plainly, that they underſtood the Statute 2 H. 5. cap. 1. to be an Affirmance of that general Right, without any Exception, but to thoſe of Royal Foundation, ſince the Statute neither mentions nor implies any other, yet Lord Coke diſtinguiſhes between *Spiritual and Lay* Hoſpitals; and ſaid, the Exemption from the Ordinary, in the Caſe of Sutton's Hoſpital, was but declaratory; For being a Lay Incorporation, he neither could, nor ought to viſit it. Gibſ. Cod. 1147. 1148.

Holt Ch. J. held, that in Defect of a particular Appointment of a Viſitor by the Founder, the Common Law makes the Founder Viſitor, and it is not at his Pleaſure, whether there ſhall be a Viſitor or not; But if he is ſilent *during his own Time*, the Right will *deſcend on his Heirs*. And his Lordſhip ſaid that it ſo appears by the Caſe in Yelv. 75. and 2 Cro. 60. where it is admitted on all Hands, that the Founder is Patron, and as Founder is Viſitor, if no particular Viſitor be appointed, and that ſo is 8 H. 7. 10 & 8 Aſſ. 29. ſo that Patronage and Viſitation are neceſſary Conſequents of each other; For this viſitatorial Power was not introduced by any Canons or Conſtitutions Eccleſiaſtical; It ariſes from the Property which the Founder had in the Lands aſſigned to ſupport the Charity. Skin. 483. Trin. 6. W. & M. B. R in Caſe of Philips v. Bury ——— Show. Parl. Caſes 45, 46 Accordingly, and there it was further argued, That in our old Books (*deprived by Patron*) and (*deprived by Viſitor*) are *all one*; For this Authority to viſit is a Benefit, that naturally ſprings out of the Foundation, and it was in his Power if he pleaſed to transfer it to another, and where he had ſo done, the other would have the ſame Right and Authority as the Founder had; That there is *no Manner of Difference between an Hoſpital and a College except only in Degree*: An Hoſpital is for thoſe that are Poor and Mean, or Sick &c. A College is for another Sort of Perſons, and to another Intent; The former is to maintain and ſupport them; This is to educate Them in Learning, that have not otherwiſe wherewithal to do it; But ſtill it is much within the ſame Reaſon of that of an Hoſpital; And if in an Hoſpital the Maſter and Poor are incorporated, it is a College, having a Common Seal to act by, though it bears not that Name, becauſe it is of an inferior Degree; And in both Caſes there muſt be an Viſitor, as both are Eleemoſinary. —— And 5 Mod. 404. Paſch. 10 W. 3. The **King v. Blythe**, it was held per Cur. That all Eleemoſinary Corporations, who are to receive the Charity of the Founder, whereof a particular Viſitor is not appointed, If they are Eccleſiaſtical, then the Ordinary of the Place is Viſitor; But if they are Lay Corporations, then the Founder and his Heirs are perpetual Viſitors ——— 12 Mod. 232 Mich. 10. W. 3. Anon. Holt Ch. J. ſaid he took it that the Corporation of a College being Lay, the Viſitation belongs to the Founder and his Heirs, and if the *Founder dies without Heir*, that the *Viſitation ſhall go to the King*; For which ſee 5 E. 4. **Simon de Benford's Caſe**, and ſaid that this was his Private Opinion; And that whether a Right of Viſitation ſhould eſcheat was a Point which divided the Court in **Dr. Patrick's Caſe**; And ſaid that there is a great Diverſity between Abbot and Convent, and Maſter and Fellows, Mayor and Commonalty &c. For in Caſe of Abbot and Convent, there muſt be the major Part, and the Abbot beſides, Becauſe he acts only cum Conſenſu of the major Part of the reſt; But in Caſe of Maſter and Fellows, &c the Maſter himſelf is but Part of the Acting Part, and he is one of the Grantors as well as the Reſt; And he ſaid, That in caſe it be *a Donative and a private Corporation, though it be Spiritual*, yet he is of Opinion that the Viſitation belongs to the Founder, though he does not, by expreſs Words, reſerve it to himſelf; For why ſhould it of Common Right belong to the Ordinary? And whether the King may grant the Inheritance of a Viſitation may be a Queſtion; For it may be ſaid to be Privy to his Perſon; But without doubt he may grant to whom he pleaſe to be Viſitor for a Time.

Fol. 231.

12. **If a Lay Hoſpital be erected,** and no Viſitor named, but Governors appointed, **the Governors ſhall viſit. Co.** 10. *Sutton* 31.

If the *Founder limits not who ſhall viſit* (ſays my Lord Coke) the Biſhop of the Dioceſs ſhall, for which he refers to the Statute of 2 H. 5. cap. 1. and ſays nothing of his Diſtinction between Spiritual and Lay Hoſpitals. Gibſ. Cod. 1151 ——— Gilbert Ch. B. ſaid the Meaning muſt be, that when an Hoſpital is incorporated as a diſtinct Corporate Body, and Governors appointed; That (in point of Conſtruction) is then a Parting with the Viſitatorial Power; For there can be no End in erecting the Governors, but to make them Viſitors where the Poor are the Corporation, and the Revenues are lodged in them as a Corporate Body. Hill. 12 Geo 1. G. Equ. R. 180. Caſe of Birmingham Schorl. — S. C. 2 Wm's Rep. 325. Eden v. Foſter.

13. All Abbies and Priories **were viſitable** by the Ordinary, as to their Rule and Order **of Common Right,** if they had no Exemption. **Davis Proxye's.** 3.

14. **The** Hoſpital of St. John of Jeruſalem **was viſitable** by the Ordinary **of Common Right. Dav. Proxies.** 1. **admitted. For they were Religious.**

15. **In the** Statute of 25 H. 8. **which takes away the Pope's Supremacy, there is a** Proviſo, (**viz.**) That the Archbiſhop of Canterbury, or any other Perſon or Perſons, ſhall have no Power or Authority, by Reaſon of this Act, to Viſit or Vex any Monaſteries, Abbeys, Priories, Colleges, Hoſpitals, Houſes, or other Places Religious, which be, or were exempted before the Making of this Act, any Thing in this Act to the contrary thereof notwithſtanding; but that Redreſs, Viſitation, and Confirmation, ſhall be had by the King's Highneſs, his Heirs

Heirs and Succeſſors, by Commiſſion under the Great Seal to be directed to ſuch Perſons as ſhall be appointed requiſite for the ſame, in ſuch Monaſteries, Colleges, Hoſpitals, Priories, Houſes, and Places Religious exempt, ſo that no Viſitation or Confirmation ſhall be from henceforth had or made in, or at any ſuch Monaſteries, Colleges, Hoſpitals, Priories, Houſes, and Places Religious exempt by the ſaid Biſhop of Rome, nor by any of his Authority, nor by any out of the King's Dominions &c.

16. **In the** Statute of 31 H. 8. cap. 13. **of the Diſſolution of Monaſteries, there is this** Proviſo, (**viz.**) That ſuch of the late Monaſteries, Abbies, Priories, Nunneries, Colleges, Hoſpitals, Houſes of Friers, and other Religious and Eccleſiaſtical Houſes and Places, and all Churches and Chappels to them, or any of them belonging, which before the Diſſolution, Suppreſſion, Renouncing, Relinquiſhing, Forfeiting, Giving up, or Coming unto the King's Highneſs, were exempted from the Viſitation or Viſitations, and all other Juriſdiction of the Ordinary or Ordinaries, within whoſe Dioceſs they were ſituate or ſet, ſhall from henceforth be within the Juriſdiction and Viſitation of the Ordinary or Ordinaries within whoſe Dioceſs they, or any of them, be ſituate and ſet, or within the Juriſdiction and Viſitation of ſuch Perſon or Perſons as by the King's Highneſs ſhall be limited or appointed, this Act or any other exempt Liberty or Juriſdiction to the contrary notwithſtanding.

So that now there are no Places totally exempt from ordinary Juriſdiction, but either ſuch as enjoy their Exemption upon the Foot of Common Law, as Free Chappels and Donatives (the firſt viſitable only by Commiſſion from the King, and the ſecond by Commiſſion from the Donor) or ſuch as the Crown may have exempted or ſhall exempt, purſuant to the Powers granted by this Statute. Gibſ. Cod. 1018.

17. **In the** Statute of 1 & 2 P. & Mar. cap. 8. (**which repeals the Statute of 25 H. 8. before mentioned here**) **there is this** Proviſo (**viz.**) Whereas by the Diſſolution of Monaſteries and other Religious Houſes, certain Pariſh Churches and Chapels were before exempt from the Juriſdiction of the Archbiſhops and Biſhop of the Dioceſs, and by ſpecial Exemption and Privilege from Rome, were under the Government and Order of the Abbots and Priors of thoſe Religious Houſes, which ſaid Churches, by Colour of the ſaid Exemptions, be now of ſpecial Grant from King H. 8. and King Edward, under the Rule and Government, and Juriſdiction of Laymen, who can no more enjoy that Supremacy over theſe particular Churches, than the King might over the whole Realm, Be it enacted, That all ſuch Archbiſhops and Biſhops in their Dioceſs, and all other Spiritual Perſons having Juriſdiction, and their Miniſters and Officers, and no Lay Perſon or Perſons, in every Church and Place within the Precinct of the ſame, being exempt or not exempt, may freely and without Impediment execute their Spiritual Juriſdiction in all Points and Articles, as tho' no ſuch Exemption or Grant had ever been made. **But after there is a** Proviſo, **that this ſhall not extend to toll or diminiſh the Privilege of the Univerſity of** Cambridge **or** Oxford, **nor the** Privileges **or** Prerogatives **granted before to the Churches of** Weſtminſter **and** Windſor, ***nor the** Tower **of** London, **nor be prejudicial to ſuch Temporal Lords and Poſſeſſioners within the Realm, who by ancient Cuſtom have enjoyed Probates of Teſtaments of their Tenants and others; but this Act is repealed by the Statute of 1 Eliz. cap. 1.**

* Fol. 232.

18. **In the** Statute of 1 Eliz. cap. 2. (**which is an Act for Uniformity of Common Prayer**) **there is a** Proviſo, (**viz.**) That all and ſingular Archbiſhops and Biſhops, and every of their Chancellors, Commiſſaries, Archdeacons and other Ordinaries, having any peculiar Eccleſiaſtical Juriſdiction, ſhall have full Power and Authority by Virtue of this Act, as well to inquire in their Viſitations, Synods, and elſewhere within their Juriſdiction, at any other Time or Place, to take Occaſions and Informations of all and every the Things above mentioned, done, committed

committed or perpetrated within the Limits of their Juriſdiction or Authority, and to puniſh the ſame by Admonition, Excommunication, Sequeſtration or Deprivation, and other Cenſures and Proceſs, in like Manner as heretofore hath been uſed by the Queen's Eccleſiaſtical Laws.

19. **In the ſaid Statute** 1 Eliz. cap. 2. **it is enacted**, That ſuch Privileges, Juriſdictions, Superiorities aud Pre-eminences, Eccleſiaſtical and Spiritual, as have been by any Spiritual and Eccleſiaſtical Power or Authority exerciſed, or may lawfully be exerciſed or uſed for the Viſitation of the Eccleſiaſtical State and Perſons, and for Reformation, Order and Correction of the ſame, and of all Manner of Errors, Schiſms, Abuſes, Offences, Contempts, and Enormities, ſhall for ever, by Authority of this preſent Parliament, be united and annexed to the Imperial Crown of this Realm; and that the King, his Heirs and Succeſſors, ſhall have full Power and Authority by Virtue of this Act, by Letters Patents under the Great Seal of England, to Aſſign &c. to Uſe, Exerciſe &c. under the King, his Heirs and Succeſſors, all Manner of Juriſdiction &c.

20. The *ſame Place* may well be viſitable *by two different Powers*. So it is in the *Caſe of every Cathedral and* every *Dioceſs*, which are viſitable as well by the Metropolitan as by the Biſhop. Gibſ. Cod. 1151.

21. The Archbiſhop of D. libell'd in the Spiritual Court againſt the Dean and Chapter there for denying to admit him to viſit them. The Defendant ſuggeſted for a Prohibition, That the *Chapel was of Royal Foundation, being firſt a Monaſtery of Royal Foundation, and afterwards tranſlated into Dean and Chapter*; and being a Donative, was exempted from the Viſitation of the Ordinary. Upon a Prohibition the Plaintiff *declared*, That this Chapel was of Royal Foundation, and *that the Ordinary had no Viſitatorial Power there, but* what he had *by the Letters Patents of Creation* 33 H. 8. *which expreſsly provide, That the Archbiſhop ſhall have no Power over the Deanry, but ſuch as he had over the Prior and Convent of the Holy Trinity Time out of Mind*, which Priory was of Royal Foundation, and had Time out of Mind been viſited by the King or his Chancellor. The Archbiſhop, after Oyer, *pleaded* That *the King did further order and declare in the ſaid Letters Patents, that the Church of the Holy Trinity ſhould be the Archiepiſcopal Seat of D. as it was before, and as it uſed to be; and the Archbiſhop ſhould exerciſe no Juriſdiction there, but ſuch as he uſed when it was a Priory; and that* Time out of Mind *the ſaid Archbiſhop, and his Predeceſſors, Archbiſhops of Dublin, kept their Cathedrals in this Church; and that the Prior and Convent before, and the Dean and Chapter ſince the Tranſlation, were the Chapter of the ſaid Archbiſhop, and* Time out of Mind *had been viſited by them*, as Occaſion required, *and traverſed that the Priory was of Royal Foundation*. Upon a ſpecial Demurrer Judgment was given in C. B. in Ireland for a Conſultation, and that Judgment affirm'd in B. R. there. Upon Error brought in the Houſe of Peers here, it was argued, That this being an *Eccleſiaſtical Corporation, is by common Intendment ſubject to the Viſitation of the Ordinary* of the Place, unleſs by the Patent of Creation there had been a Viſitor appointed by the Founder; for all ſuch are Prima Facie ſubject to the Juriſdiction of the Ordinary, tho' founded by the Crown, and ſo is **Corbet's** Caſe, in D. 273. That the only material Point is, *Whether this was of Royal Foundation, or not?* which was not the Point of the Caſe between this * **Archbiſhop** and **Dr. Harriſon** ſome Years paſt, who was a Prebendary of this Church. For if the Priory was not of Royal Foundation, the Deanry, into which it was tranſlated, cannot be ſo; but if it was of Royal Foundation, then the Tranſlation into Dean and Chapter is no Prejudice to the Founder, he remaining Founder ſtill; for nothing is alter'd but the Monaſtick Rule and Habit; and ſo it was held in the **Dean and Chapter of Norwich**'s Caſe. 3 Rep. 73. 30 H. 8. at which Time the Priory and Convent of the Cathedral Church of the Holy Trinity of Norwich, was tranſlated into the Dean and Chapter. So that

* See (C. f) Marg. pl. 2.

if

if nothing is altered by the Tranſlation, the Founder is not deprived of his Right of Patronage, neither is the Viſitor of his Right of Viſitation; becauſe it is ſtill the ſame Body Corporate, tho' by another Name. And Judgment was affirm'd. 8 Mod. 183. Mich. 10 Geo. 1724. Trinity-Chapel in Dublin v. Archbiſhop of Dublin.

(F. f) *Exemptions.* [Viſitation.]

1. THE King might exempt Abbeys from the Viſitation of the Ordinary; for the King is Supreme Ordinary. Da. Commend. 73.

The King may erect a *Free Chapel*, and exempt it from the Juriſdiction of the Ordinary.

This is agreed on all Hands; and our Law-Books add, That he may *licence any Subject to found ſuch a Chapel, with ſuch Exemption*; which however poſitively ſaid, ſeems not to be a ſelf-evident Truth; and yet I find not any Inſtances alleg'd to confirm it. That many Free Chapels have been in the Hands of Subjects, is not denied; but it does not therefore follow, that thoſe were not originally of Royal Foundation. Gibſ. Cod. 237.——The King may erect a Free Chapel, and exempt it from the Ordinary. And I think he may do it without Conſecration, as in the Inſtance of Whitehall; but tho' the Codex is unwilling to grant it, yet our Books are very expreſs, that the King may licence a Subject to found a Free Chapel, and exempt the ſame from the Juriſdiction of the Ordinary. Watſ. Clerg. Law 646.

(G. f) *Appeal.* * *Delegates.*

* The Court of Delegates *is ſo called, becauſe* the *Judges* are delegated, and *ſit by* Force of *the King's Commiſſion* under the Great Seal,

1. BY the Statute 25 H. 8. Appeals to Rome are Prohibited, and Ordained, that for Default of Juſtice in any of the Courts of the Archbiſhops of this Realm &c. it ſhall be lawful to appeal to the King in his Court of Chancery, and thereupon a Commiſſion ſhall be † granted &c. And by a Proviſo *circa finem Statuti*, an Appeal is given to the King in Chancery, upon Sentences in Places exempt, in the ſame Manner as was uſed before to the See of Rome.

upon Appeals to the King in *three Caſes*. 1ſt When a Decree or Sentence is given in an Eccleſiaſtical Cauſe by the Archbiſhop, or any of his Officials. 2dly. When any Decree or Sentence is given in any Eccleſiaſtical Cauſe in *Places exempt*, or Peculiars belonging to the King, or to an Archbiſhop. 3dly, When a Sentence is given in the *Court of Admiralty* according to the Civil Law. Wood's Inſt. 505.—— S. P. 4 Inſt. 339. cap. 74 ——S. P. Godolp. Rep. 116. cap. 11. S. 13.

† The Statute goes on and ſays, That a Commiſſion ſhall be granted *under the Great Seal, to certain Perſons to be named by the King, who ſhall thereby have Power, as in Caſes of Appeal from the Admiral Court, to hear and definitely to determine all ſuch Appeals, and the Cauſes concerning the ſame, and from whoſe Decree or Sentence no further Appeal ſhall be had.* But note, In Caſe where a Sentence is given by Commiſſioners delegated by the Prince, as by the late Viſitors Anno 1 Eliz. the *Party grieved appealing*, ſuch Appeal is out of the Orders preſcribed by the Statute of 24 H. 8. and 25 H. 8. cap. 19. And the Prince in that Caſe may grant *a new Commiſſion to others to determine that Appeal*. And this was done by the Opinion of ſeveral Juſtices in Goodman's Caſe, deprived of the Deanry of Wells. 4 Inſt. 340. cap. 74. cites a Manuſcript Report of Lord Dyer.

The *Biſhop* of Winton *is made Viſitor of Magdalen College* in Oxford *by the Founder, and exempted from any Ordinary* &c. Dr. Coveney *Preſident* of the ſaid College, *was deprived by the Viſitor*; and from his Sentence *appealed to the Queen* in Chancery. It was reſolved by the Juſtices to whom this Appeal was referr'd, they having conferr'd with Civilians, That the Appeal doth not lie; for it is out of the Statutes 24 & 25 H. 8. cap. 12. For this Deprivation is a Matter meerly Temporal, and as if done by a Lay Patron. So that if he be expell'd he may have Aſſiſe, or ſuch Suit at the Common Law. D. 209. pl. 20. Mich. 3 & 4 Eliz. Dr. Coveney's Caſe ——S. C. cited 4 Inſt. 340. as Dr. Coveney's Caſe, Preſident of New College in Oxford.——S. C. cited Arg. 4 Mod. 112. 116. And there the Caſe of Shirax in the Year-book of E. 3. Fitzh. Tit. Aſſiſe, pl. 150 is cited, that he being deprived by the Ordinary where the Foundation was Lay brought an Aſſiſe; and it was held good. And Ibid. 124 The Court ſaid that Shirax having a Donative, and being deprived by the Archbiſhop of York as Ordinary and Viſitor, and another being collated, the Queſtion was, Who was Viſitor? And it appeared plainly that it could not be the Archbiſhop, becauſe the Matter was not Spiritual, it was in Caſe of a Lay Hoſpital, which had no Spiritual Poſſeſſion, it was neither College nor Convent; and therefore the Aſſiſe was held good, which proves nothing in the Caſe of a Spiritual Corporation; for if the Deprivation had

been by a proper Viſitor, and one who had a lawful Juriſdiction, his Sentence would have been final, and no Aſſiſe could have been brought to examine it Trin. 4 W. & M. B. R. in Caſe of Philips v. Bury.--Show. Parl. Caſes 47 Arg. in the Caſe of Philips v. Bury, it was inſiſted that this Caſe of Dr. Coveney in D. 209. nor that of **Bagges's Caſe** 11 Rep. 99. of an Aſſiſe lying becauſe of No Appeal, will not upon Peruſal warrant the Diſtinction; for that the Party is as much concluded in the one Caſe as in the other, and that it is reaſonable to ſuſpect that Caſe not to be Law, becauſe that is impracticable which it is brought to prove The Head of the College cannot maintain an Aſſiſe for his Office of Headſhip; He hath not ſuch an Eſtate as will maintain that Writ; He hath no ſuch Sole Seiſin; The whole Body of the College has an Intereſt therein; He has no Title to the Monies in his own Right, till a Diſtribution thereof is made by Conſent; He is the only viſible Head indeed of the Body, but has no ſingle Right. And that in **Appleford's Caſe** it was ſaid by Lord Hale, that it was impoſſible he could have an Aſſiſe.

Note, It is commonly ſaid, there muſt be a *Warrant under the Sign Manual* of the King before the Lord Chancellor or Lord Keeper can iſſue out any Commiſſion of Delegates, notwithſtanding the Statute of the 25 H. 8. Watſ. Clerg. Law 56.

2. But **it is to be obſerved that** this Appeal **to the King in Chancery,** is only **by the Statute aforeſaid,** upon a Suit in the Archbiſhop's Court, or in a Peculiar exempt; **for if there be a** Suit upon a Commiſſion general of the King, **there no Appeal may be** to the King in Chancery, **within the Statute of the 25th by the Words aforeſaid**; **and therefore** there may be * an Appeal to the King generally, **as he is the Supreme Head of all Eccleſiaſtical Juriſdiction within the Realm**; **and this ought to be upon a Bill ſigned by him, before the Chancellor may make the Commiſſion of Delegates to hear it. But upon Appeals upon the Statute,** the Chancellor **may** grant the Commiſſion of **himſelf of Courſe, without any** Bill ſigned. **5 E. 6. Stephen Gardiner was deprived upon a Commiſſion of Delegates, and he appealed to the King generally, and not to the King in Chancery, and thereupon the Sentence repealed. 1 Mar. as I have heard by Report of Mr. Selden; and ſo was it done in the Lord** *Hartford's* **Caſe about the 1 Jac.**

Williams J. held, That the Court of Delegates

3. **The Delegates** may excommunicate. **H. 10. Ja. B. [Said] per Cook to be reſolved by all the Juſtices in the Archbiſhop of Canter- Caſe.**

cannot pronounce a Sentence of Excommunication; and ſaid that they had lately adjudged that Point againſt the Court of Delegates 2 Bulſt. 4. Mich. 10 Jac. B. R. in Caſe of Stevenſon v. Wood.——But Wood's Inſt. 505. ſays, That if the Delegates in Eccleſiaſtical Cauſes are *Spiritual Perſons*, they may proceed to Excommunication; if they are all *Laymen*, the Fault is not in the Law, but in the Nomination.

The Power of the Judges Delegates is *Poteſtas delegata corrigere, non exequi*; they have Power there to examine, but not to correct. Per Williams J. 2 Bulſt. 4. in Caſe of Stevenſon v. Wood.

Tho' the Court of Delegates may revoke or confirm an Adminiſtration, yet it ſtill remains a *Quære, whether they may grant it originally*; and in the firſt Inſtance this was a Point ſtated in the Caſe of * **Stevenſon v. Wood.** 10 Jac. 1. and the better Opinion was, that they could not. Watſ. Clerg. Law 58.——* S. C. 2 Bulſt. 4. accordingly; but the Doctors of the Civil Law differing in Opinion among themſelves, the Court pronounced no abſolute Judgment, but it was adjourned, and not ſpoken to again. But Williams J. cited one **Brackenburye's Caſe**, where it was adjudged, That they could not grant Letters of Adminiſtration, they having no Power ſo to do.

4. **They** may commit Adminiſtration. **Hil. 10 Ja.**

In a Prohibition the Caſe was; A. died Inteſtate. B. his Brother gets Adminiſtration in the Inferior Dioceſs; M. who pretended to be Wife of A. ſuggeſted Bona Notabilia, and procured a Prerogative Adminiſtration; B. appealed to the Delegates, and died; C. his Son and Heir gets the Prerogative Adminiſtration repealed, and Adminiſtration granted to himſelf. M. prayed a Prohibition, ſuppoſing that by the Death of one of the Parties the Commiſſion was determined; but the Court were of Opinion againſt the Prohibition, and that the Delegates Authority to proceed in that Caſe continued notwithſtanding B.'s Death; for by the Words of their Commiſſion, the Eccleſiaſtical Law is to be their Rule, and by that Law a Suit does not abate by the Death of the Parties. And Hale ſaid, The Appeal is to the King in Chancery, and is by Reaſon of his Original Juriſdiction, and thereupon he grants a Commiſſion to hear it; now if he could hear it in Perſon, he may certainly determine the Cauſe after the Death of the Parties, and conſequently they to whom he has delegated his Authority, may do the ſame. But upon the Attorney General's deſiring to be heard, the Court gave further Time. Vent. 133. Trin. 23 Car. 2. B. R. Pollexfen v. Pollexfen.—2 Lev. 6. Paſch. 23 Car. 2. B. R. ſays, the Prohibition was denied.—2 Keb. 779. S.C. and that the Prohibition was diſcharged Niſi.

It was the better Opinion, and in a Manner agreed that B. R. may prohibit the Delegates *from Committing Adminiſtration.* 1ſt. Becauſe the Authority of the Delegates is *given by* 25 *H.* 8. and ſo their Juriſdiction does not commence by Spiritual Law; but as the Pope had an uſurped Power, which is transferr'd to the King by Parliament, and the King gives it to the Commiſſioners Delegates. And 2dly. Becauſe they cannot be Judges in their own Cauſe. Lat. 86. in Caſe of Reeve v. Denny.

5. A Sentence in the Spiritual Court at L. was had againſt the Plaintiff, who afterwards appealed to the Arches, where the Sentence was affirm'd, and adjudged, ut ſupra, againſt the Plaintiff. Whereupon he ſued a Commiſſion to the Delegates, and the Matter was re-examined, and Sentence then given for the Plaintiff. Thereupon another Commiſſion was ſued out to re-examine this Matter. A Prohibition was prayed to ſtay it, becauſe the 25 H. 8. enacts, that a Sentence before the Delegates ſhall be final, and conſequently this ſecond Commiſſion is not well awarded. But it was anſwered, That the Queen hath by Law an Abſolute Power to grant Commiſſions to Re-examine, which is not reſtrained by the 25 H. 8. And that it hath been ſo rul'd before theſe Times; and of that Opinion was Popham; but becauſe it was a new Caſe, they would adviſe thereof. Cro. E. 571. Trin. 39 Eliz. B. R. Gervis v. Hallewell.

Mo. 462. pl 652. S. C. by Name of Hallwell v. Jervoiſe, ſays, the Court conferr'd with all the Juſtices of England, and that Popham inclined that the Prohibition was not grantable, becauſe the Pope uſed to review in ſuch Caſes after Sentence by the Legate; and whatever the Pope was wont to do is united to the Crown by the Statute 25 H. 8. cap 20. [19.] But they agreed that this Review ſhould be final without further Appeal. Fenner ſeem'd e contra, and that the Pope's Authority is abrogated and extinct and that no Appeal is given by the Statute any further than to the Delegates; and therefore it could not be lawful to go any further. But at another Day, by a Conference with all the Juſtices, they agreed that the Commiſſion was well granted, and that Conſultation ſhould be awarded; but that if the Commiſſioners do not proceed to the Examination according to the Common Law, they ſhall be reſtrained by Prohibition.

6. The Delegates *cannot make a Diviſion of* Inteſtates *Goods*. Per Hubbard. Noy 24. in Took's Caſe.

7. The Delegates *cannot interpret a Statute*. Per Hubbard. Noy 24. in Took's Caſe.

8. The Court of Delegates have *no Power to prove Wills*; Per Williams J. 2 Buls. 4. Mich. 10 Jac. B. R. in Caſe of Stevenſon v. Wood.

9. The Judges Delegates muſt *judge according to the Eccleſiaſtical Law*. Per Ld. Keeper. Chan. Caſes 201. Paſch. 23 Car. 2. in Caſe of Vanbrough v. Cock.

10. The Judges and Civilians ruled on Debate, that the *Teſtimony of one* N. who was *examined in Chancery between the ſame Parties*, and Croſs-examined there, ſhould be *read before the Delegates*; though it was objected, that the Appellant here ſhould take the Advantage here which he ſhould have had if he had been Croſs-examined; For Croſs-examining a Witneſs ſets him Upright in Chancery but not here. 2 Chan. Caſes 250. Hill. 30 & 31 Car. 2. Gargrave alias Fan v. .....—[So the Book is.]

11. The *Reformatio Legum*, ſpeaking of the Appeal to the King, adds as follow, *Quo cum fuerit Cauſa devoluta, eam vel Concilio Provinciali definiri volumus, ſi gravis ſit Cauſa, vel a tribus Epiſcopis a nobis ad id Conſtituendis*. But in modern Practiſe (viz. only from the Year 1639) there are *Temporal Judges and Temporal Lords* appointed for the final Determination of Matters confeſſedly Spiritual. Gibſ. Cod. pag. 1082. ——— The ſame Author ſays, That there are *no Footſteps of* any of the *Nobility, or Common Law Judges in Commiſſion till the Year* 1604, (i. e. for 70 Years after the erecting the ſaid Court) nor from 1604 are they found in above one Commiſſion in forty till the Year 1639; From whence, (i. e. from the Downfall of Biſhops and their Juriſdiction which enſued,) we may date the preſent Rule of Mixtures in that Court. Ibid. Introd. Diſcourſe, pag. 21.

Watſ. Clergy Law 56. ſays, this is a groſs Error; and that the Practice has been all along to have Lay Judges joined in the Commiſſion with Eccleſiaſticks.

12. There lies *no Appeal to the Houſe of Lords* from a Sentence in the Delegates; For they cannot have any original Juriſdiction; becauſe it is a Matter grounded upon an Act of Parliament, and the Act gives them none; Per Lds. Commiſſioners. 2 Vern. 118. Mich. 1689. Saul v. Wilſon.

13. A Woman was ſuppoſed to be Married firſt to A. and afterwards to B. Both A. and B. being then living; and upon a Diſpute, the Spiritual Court affirmed the firſt Marriage, but was diſallowed on Appeal to the Delegates, and the 2d held good; There was Iſſue by the 2d. but none by the firſt. Upon a Petition for a Commiſſion of Review to reverſe

verſe the laſt Sentence, Ld. C. King ſaid, That a *Commiſſion of Review is not a Matter of Right* but purely in the Diſcretion of the Crown, and as ſuch Commiſſion tends to Baſtardize the Iſſue he was againſt it, and ſhould adviſe the Crown accordingly. 2 Wms's. Rep. 299. Trin. 1725. Franklyn's Caſe.

(H. f) Appeals.

An Appeal did not lie from the High Commiſſion Court when in Being; becauſe they *themſelves were the King's Delegates*, as acting by an immediate Commiſſion from him. And there was *no Remedy* againſt their Sentences, *but a new Commiſſion to others*, grantable by Virtue of the Royal Prerogative independant on the Authority given by 25 H. 8. or any other Statute. Watſ. Clerg. Law. 55, 56.

1. IF a Sentence be given in the High Commiſſion Court, no Appeal lies from it de Jure. M. 5 Jac. B. M. 8 Jac. B.

2. But upon ſuch Sentence an Appeal may be, if the Party can acquire a ſpecial Commiſſion to examine it. M. 5. Jac. B.

3. H. 2. ordained, that Appeals ſhould be from the Conſiſtory to the Arch-deacon; from him to the Biſhop; from him to the Archbiſhop; from him to the King. For. 265. Speed 458.

4. But Matthew Paris has further, that the King commanded the Archbiſhop to make an End of the Suit, and that he proceed no further without Licence of the King. Speed. 458. Jan. Anglor. 94. 53.

5. In Roger Hovend. fol. 303. and Jan. Anglor. 94. it is, that Appeal ſhall be from the Archdeacon to the Biſhop commencing with the Archdeacon without ſpeaking of the Conſiſtory, and ſo Cook in his 6. Epiſtle cites it, and there he obſerves the Power of the King upon Eccleſiaſtical Juriſdiction to be ancient and not new.

6. Among the Petitions in Parliament 18 E. 1. there is ſuch Petition, William de Nottingham Clericus petit, quod poſſit proſequi Appellationem ſuam in Curia Romana &c. Rex non conceſſit, quod Privilegium ſuum infringat, ſed impetret intra Regnum, ſi ſibi videret expedire.

7. 24 *H.* 8. *cap.* 12. *S.* 5. Enacts, that Appeals *in Cauſes Teſtamentary, Cauſes of Matrimony and Divorces, Right of Tithes, Oblations and Obventions*, ſhall be ſued from the Archdeacon *or his Official, if the Matter be there commenced*, to the Biſhop *of the Dioceſs.*

A Parſon of a Church in the Dioceſe of Winton was deprived, and he appealed to the Archbiſhop of C. in Curia Prærogativa ſua de Arcubus; the Queſtion was, Whether this Appeal was well brought? becauſe the Statute mentions only the Archbiſhop of the Province where &c. without limiting any Court in certain. It was the Opinion of all the Juſtices of B. R. that the ſaid Words in the Appeal, viz. (In Curia Prærogativa ſua de Arcubus) were void and ſuperfluous, and that the Words, viz. (to the Archbiſhop of C.) were ſufficient to have the Benefit of the Appeal by the Equity and Intendment of this Statute. D. 240, pl. 46. Trin. 7 Eliz. Anon.

S. 6. *And if the Matter be there commenced before the* Biſhop *Dioceſan or his Commiſſary, then within* 15 *Days after Sentence given, an Appeal may be* to the Archbiſhop *of the Province to be there definitely adjudg'd.*

In Trin. 3 W. 3. the Court agreed, that no Appeal could be made from the Dean of the Arches to the Archbiſhop, becauſe it was one and the ſame. Carth. 170. in Lee's Caſe.——But Ibid. in Marg. the Reporter ſays, that the Statute 24 H. 8. 12. is expreſsly to the contrary, but that this Statute was not mentioned.

S. 7. *If the Matter be commenced before* the Archdeacon *of any Archbiſhop, or his Commiſſary, the Appeal may be within* 15 *Days &c.* to the Audience or Arches *of the ſaid Archbiſhop*, and from thence *within other* 15 *Days &c.* to the Archbiſhop himſelf, *and no further.*

S. 8. *And*

S. 8. *And* if *the Caſe be* commenced before the Archbiſhop, then *to be there definitively* determined without further Appeal.

S. 9. *Where the* Matter touches the King, *the Appeal may be within* 15 *Days* to the Higher Convocation Houſe of that Province, *and no further, but finally to be there determined.*

8. G. was inſtalled *Dean of Wells*, and afterwards *made a Prebendary* of the ſame Church. Upon a Viſitation by the King's Letters Patents, he was *deprived of his Deanry by the Biſhop's Commiſſary*, becauſe he could not hold two Dignities ſimul & ſemel in the ſame Church, and the firſt was void by the Canon Law. The Dean *appealed to the Archbiſhop*, who affirmed the Sentence. Whereupon he appealed *to the King*; *but the King granted the Deanry to* one *Turner*; after which the King died. Queen Mary granted another Commiſſion to the *Delegates*, who *reſtored him* to his Deanry. After the Death of Queen Mary (viz.) Anno 1 Eliz. *Turner by a new Commiſſion was reſtored* by Sentence, and that Sentence after affirmed by other Commiſſioners, notwithſtanding the Reclaimer and Appeal of G. Dyer 273. pl. 35. Paſch. 10 Eliz. Walrond v. Pollard. S. C. cited Dav. 46. b. in Caſe of the Dean and Chapter of Fernes

10. Stephen Gardiner, Biſhop of Wincheſter, was *deprived* at Lambeth *by Commiſſion* from E. 6. made to 10 Perſons proceeding thereupon Ex Officio mero, mixto vel Promoto, *omni Appellatione remota*, Summarie de Plano, without any Form or Figure of Judgment, but only upon an Inquiry into the Truth of the Fact. 4 Inſt. 340. cites a MS. Rep. of Ld. Dyers.

10. An Appeal being a natural Defence *cannot be taken away by any Prince or Power*; and in every Caſe generally, when Sentence is given and Appeal made to the Superior, the Judge, that did give the Sentence, is bound to obey the Appeal, and to proceed no further until the Superior hath examined and determined the Cauſe of Appeal; nevertheleſs, where this Clauſe (*Appellatione remota*) is in the Commiſſion, the Judge, that gave Sentence, is not bound to obey the Appeal, but may execute his Sentence and proceed further, until the Appeal be received by the Superior, and an Inhibition be ſent unto him; for the Clauſe (Appellatione remota) *hath three* notable *Effects*; 1ſt, That the Juriſdiction of the Judge that gave Sentence is not by the Appeal ſuſpended or ſtopped; for he may proceed, the ſame notwithſtanding. 2dly, That for Proceeding to Execution or further Proceſs he is not puniſhable. 3dly, That thoſe Things that are done by the ſaid Judge after ſuch Appeal cannot be ſaid void; for they cannot be reverſed Per viam Nullitatis. But if the Appeal be juſt and lawful, the ſuperior Judge ought of Right and Equity to receive and admit the ſame, as he ought to do Juſtice to the Subjects; and ſo if the Cauſe of the Appeal be juſt and lawful, he ought to reverſe and revoke all mean Acts done after the Appeal in Prejudice of the Appellant. Thus far the Report of the Lord Dier truly Tranſlated. 4 Inſt. 340. cap. 74.

(I. f) The *Effect* of Appeal.

See (H. f)

1. **If** after Sentence **the Party appeals** the Sentence **is** utterly ſuſpended **during the Appeal.** 2 R. 2. **Quare Impedit.** 143. The very bringing an Appeal is a Suſpenſion of the firſt Judgment in the Spiritual Court for the principal Matter, but not for the Coſts; Per Lord Keeper Egerton. Goldsb. 119. pl. 4. Hill. 43 Eliz. in the Caſe of Willoughby v. Willoughby.

2. **If a Man appeals** from a Sentence of Excommunication he may celebrate Maſs. 20 H. 6. 25. b.

3. So after Appeal he may bring Actions at Common Law, and ought to be answered. Dub. 20 H. 6. 25.

4. If an *inferior* Spiritual *Court commits Adminiſtration, and* an Appeal is made from thence *to the Arches and there* the firſt Adminiſtration is *affirm'd*, the *Uſe is to remit the Cauſe*; *but when* the firſt Sentence is *reverſed the firſt* Court ſhall be *ouſted of Juriſdiction*, and the Court that reverſes it &c. ſhall *commit de Novo.* Lat. 85. Reeve v. Denny.

5. If a Church be only voidable by Deprivation, and the Eccleſiaſtical Judge hath actually pronounced a Sentence of Deprivation againſt the Incumbent, yet *if the Perſon deprived appeals, the Church is not* actually *void* ſo long as the Appeal dependeth; And if the *Sentence* of Deprivation upon the Appeal be *declared void*, the *Clerk is* perfect *Incumbent as before*, without any new Inſtitution. Watſ. Comp. Inc. 8vo. 95. cap. 6. cites Fitzherb. Abr. 2 R. 2. Quare Impedit. 143. 27 H. 7. Gard. 118. Trin. 7 Eliz. Dyer. f. 240. and Mich. 33 & 34 Eliz. Gayton's Caſe. Owen 12. Packman's Caſe. 6 Co. 18.

6. If the *Appeal* be *to the King* in Chancery, and the *Deprivation* be *affirmed* by the King's Delegates, or if the Deprivation be immediately made by the Lord Chancellor, or Keeper, for that the Incumbent is viſitable immediately by the King, I conceive that *no Appeal lies*, and that the only Remedy, that the Perſon deprived hath, is to *get a Commiſſion of Review*, which is only grantable of Grace by the King, and not of Right; nor is there any Remedy at Common Law if the Cauſe of the Deprivation was Eccleſiaſtical; for there the Sentence is binding, and not thereby examinable; and therefore, if a Perſon be deprived by the Authority aforeſaid, and another be inſtituted to his Benefice, the new Incumbent's Title ſtands good 'till it be reverſed upon the Commiſſion of Review; for this was ſaid in the Caſe of a Clerk deprived by the High Commiſſioners. Watſ. Comp. Inc. 8vo. 95. cites Trin. 4 Jac. Bird v. Smith. Moor 781.

See Commendam.

(K. f) Prerogative of the King in *Matters Eccleſiaſtical.*

Cro. E. 542. S. C. where it is held by Gaudy and Fenner, that the King had this Prerogative by the Common Law; for the Benefice is made void by the King's Act, and he may well diſpenſe with his own Act.

1. THE King by his Prerogative Royal may grant Licence to an Incumbent to hold his Benefice in Commendam with a Biſhoprick. H. 39. El. B. R. *Armiger* and *Holland.*

2. 9 E. 1. Rot. Clauſ. M. 4. Dorſ. Rex Epiſcopo Ciſtr. &c. Cum nos & Progenitores noſtri hoc Privilegio uſi ſumus a Tempore quo non extat Memoria quod Clerici noſtri ad ordines Suſcipiendos vel ad faciend. ſuper ſuis Beneficiis perſonalem Reſidentiam dum noſtris immortantur * obſequiis compelli non debeant Mandamus vobis quod W. Clericum noſtrum &c.

* Fol. 234.

3. H. 8. E. 3. B. R. Rot. 23. The Archbiſhop of York ſummonitus per breve de Ven. fac. ad reſpondend. Domino Regi pro Conſecratione Epiſ. Durham elected a Biſhop without the Aſſent of the King; the Defendant comes and ſays, that he is a Peer of the Realm, and ought not to be compell'd to anſwer by Attachment and Diſtreſs &c. To which it is anſwered, Quod Contemptus, Exceſſus & Tranſgreſſio prædicta tangunt Uſurpationem Juris Regii Contra Coronam per quod Prædictum Breve de Venire fac. fuit invent. per Concilium Regis, quia in Novo caſu Novum Remedium eſt Apponendum, dies datus ad Audiend. Judicium.

4. The

4. The Kings of England from Time to Time in every Age before the Time of H. 8. have uſed to *grant Diſpenſations in Cauſes Eccleſiaſtical*; for where the Law of the Church is, that every Spiritual Perſon is viſitable by the Ordinary, King William *the Conqueror* by his Charter *exempted the Abbot of Battel from Viſitation and Juriſdiction* of the Ordinary in thoſe expreſs Words (*Sitque dicta Eccleſia libera et Quieta imperpetuum ab omni Subjectione Epiſcoporum et quarumlibet Perſonarum Dominatione*, ſicut Eccleſia Chriſti Cantuarenſis &c.) by which he diſpenſed with the Law of the Church in this Caſe. Dav. Rep. 72. b. 73. a. Paſch. 9 Jac. C. B. in Ireland, in the Caſe of Commenda.

5. The King may *diſpenſe with a Prieſt to Hold two Benefices*, and *with a Baſtard that he ſhall be a Prieſt*, notwithſtanding the Eccleſiaſtical Laws which are to the contrary; and as he may diſpenſe with thoſe Laws, ſo he may Pardon all Offences againſt them. Dav Rep. 73. a. Paſch. 9 Jac. C. B. in Ireland, in the Caſe of Commenda.

6. The Eccleſiaſtical Court cannot proceed to *puniſh* a Perſon for *a Crime*, according to the Canons, for which he is *pardoned*, or at Common Law excuſed. Arg. Skin. 500. Trin. 6 W. & M. B. R. in the Caſe of Philips and Bury.

(L. ſ) Prerogative of the King in *Eccleſiaſtical Courts*, by *Writs* of *the King*.

1. IF Pariſhioners of a Pariſh have uſed Time out of Mind to elect two Churchwardens Annually, and to preſent them to the Archdeacon to be ſworn, and he has uſed to ſwear them, and now upon ſuch Election and Preſentation to him to be ſworn, he refuſeth to ſwear them, a Writ may be directed out of B. R. to the Archdeacon commanding him to ſwear them. M. 17 Jac. B. R. Such Writ granted for the Churchwarden of *Sutton-Valence* in *Kent*. For tho' a Canon be made 1 Jac. to the contrary, it cannot take away the Cuſtom. T. 15 Car. B. R. Such Writ granted for the Churchwardens of the Pariſhes of * *Ethelborough* and *St. Thomas Apoſtle's* in London, after diverſe Motions and upon hearing of Counſel on both Sides. P. 4 Car. B. R. Rot. 420. || *Draper* and *Stone*, like Writ granted. --- For the Churchwardens of ‡ *Holbeton* in *Devon*, like Writ granted.

* Mar. 22. pl. 50. S C. Jo. 439 S.C. by Name of Evelyn's Caſe. — Cro. C. 551. S C.--

|| Prohibition (F) pl 51. S. C. —— ‡ Mar. 66. pl. 104. Mich. 15 Car. S. C. and cites the Caſes of Sutton-Valence in Kent, and of St. Ethelborough in London. — S. P. Raym. 439. Paſch. 33 Car 2. Carpenter's Caſe. —— If the *Party elected offers himſelf*, and the *Eccleſiaſtical Judge refuſes to tender the Oath to him*, a *Mandamus* from the Temporal Court will be granted, and will not be revoked upon a *Return that he is not Habilis Perſona*; becauſe they ſay, that in this the Eccleſiaſtical Court are not to judge of the Qualifications of the Perſon any more than of an Executor or an Adminiſtrator; but the Pariſhioners who chuſe him are the moſt proper Judges of his Fitneſs for the Office. And it muſt be own'd, with regard to the Goods of the Church, that the Pariſhioners who are to repair what is loſt or ſpoil'd, ought to be Judges in what Hands they ſhall be lodged, becauſe they may well be preſum'd to chuſe ſuch Hands as are ſafe. But with regard to the Duty of preſerving Order, and preſenting Vice, the Preſumption does not hold ſo ſtrong that the Pariſhioners will always chuſe ſuch as ſhall be zealous in that Work, which yet is a very conſiderable Branch of the Office of Churchwarden. Gibſ. Cod 243.

2. 36 E. 3. The King commanded the Biſhop of Exon to ſend Chriſme to the Pariſh of St. Burien in Cornwall.

3. F. N. B. 63. A Writ de Cautione admittenda directed to the Ordinary.

4. F. N. B. 200. A Writ directed to the Mayor of Oxford to inrol a Teſtament and to prove it.

5. If

5. If a Clerk of a Parish in London has been used Time out of Mind to be elected by the Vestry, and after admitted and sworn before the Archdeacon, and he refuses to swear such Clerk so elected, but admits another elected by the Parson, a Writ may be awarded to him, commanding to swear him. 22 Jac. B. R. *Walpoole's Case.* Mich. 16 Car. B. R. between * *Orme and Pemberton*, for the Clerk of the Parish of St. *Foster's* London such Writ granted.

* Cro. C. 589 S. C.

For more of Prerogative in General, See Aid of the King, Canons, Commendam, Presentation, and other proper Titles.

Nonentitled as Commendam in this abridgment.

* Prescription.

Fol. 264.

* Prescription is from Time whereof the Memory of Men living &c. and this holds if there be no special Evidence by Record to the contrary. Jenk. 26. in pl. 49.

(A) [*Who.* And] *by what Names* they may prescribe, [though they hold only at Will &c.]

1. † A Serjeant at Law may prescribe, that he and all Serjeants have used &c. to be impleaded only by Original. 11 E. 4. 2. b. though they are not a Corporation.

† Bill of *Debt against a Serjeant at Law*, who *said*, *That he came to the Bar to plead and minister Matter for his Client, and Bill does not lie against him*; *and* after he *said*, *that he is Serjeant at Law, and that he and all Serjeants at Law Time out of Mind have been impleaded by Writ original, and not by Bill*; And demanded Judgment if the Court will take Conusance. The Plaintiff demurred. Per Brian, You cannot prescribe; for you are not incorporated. But it was held, that *several may prescribe, who are not incorporated*, as *Officer of the Court* shall prescribe in Privilege &c. Br. Prescription, pl. 72. cites 11 E. 4. 2.

Br Prescription, pl. 72. cites S. C.—*So* in Trespass for trampling his Grass, the *Defendant said*, *That* the Place &c. is &c. and that the City of Coventry is an ancient City Time out of Mind, and *all the Citizens and Inhabitants* of the same City *have had Common in the said Place* for all their Beasts Levant and Couchant in the same City Time out of Mind *from such a Day to such a Day, and that the Defendant is an Inhabitant in the same City*, by which he put in his Beasts as in his Common; And it was agreed, that the *Mayor and Citizens of C. may prescribe for them and their Inhabitants* &c. and not otherwise. Br. Prescription pl. 28. cites 15 E. 4. 29 —— S. P. Br. Customs, pl. 40. cites 18 E. 4. 3. —— So Prescription may be, that the Usage of the Vill of D. has been Time out of Mind, that the Inhabitants &c. *have had* * *Way over the Land of the Plaintiff to the Church* &c. or that they have been *quit of Toll at the Mill* &c. Br. Prescription, pl. 76. cites 18 E. 4. 3. —— S. C. cited D. 71. pl. 72. —— * S P. and that Inhabitants may prescribe *in Easement, contra in Profit Apprender out of another's Land*; Per Pigot, which was not contradicted. Br. Prescription, pl. 28. cites 15 E. 4. 29.—— Inhabitants, *unless they are incorporated, cannot prescribe to* have *Profit in the Soil of another, but* in Matters of *Easement only*, as in a Way to a Church; *So* in Matters of *Discharge*; As to be discharged of Toll or Tithes, or in a † Modus decimandi; But not in Matters of Interest. Cro. J. 152. Hill. 4 Jac. B. R. Smith v. Gatewood.——6 Rep. 59. b. S. C.—— S C. cited Arg. 2 Lutw. 1346. in Case of Johnson v. Wyard.——S. C. cited 3 Buls. 326. in Case of Turner v. Denning.——† S P. Cro. E. 446 Mich. 37 & 38 Eliz. C. B. in Case of Austye v. Fawkener.

2. So an Attorney may prescribe, that he and all Attorneys &c. have used to have Privilege &c. 11 E. 4. 2.

3. A Man may prescribe, that all the Inhabitants of the Parish have used to have their Sacraments, and to be buried in the Church-yard &c. 18 E. 4. 2. b.

Brooke makes a Quære, if *Housholders* may prescribe. Br. Prescription, pl. 98. cites 11 H. 6. 19.

4. **A Man may allege a Cuſtom** Quod quilibet Capitalis Juſticiarius de Banco **pro tempore exiſtens has uſed** Dare quodlibet Officium of the Court &c. D. 2. 3. Ma. 114. 63.

S. P Br. Preſcription, pl. 4. cites 20 H. 6. 8.—S. P. Br. Preſcription, pl. 72. cites 11 E. 4. 2.

5. **A** Sheriff **cannot preſcribe, that he and all thoſe who have been Sheriffs have been ſeiſed of** a certain Gift at every Tourn **held** &c. **For Sheriff is choſe by the King every Year, and removeable at the King's Will. 42 E. 3. 5. adjudged.**

Br. Office and Officer, pl. 31. cites 42 E. 3. 4. ——Br. Preſcription, pl. 9 cites 40 E. 3, 4. [but it ſhould be 42 E. 3, 4. according to Br. Office.]

6. But **vide in** 21 H. 7. 16. b. **An** Under-Sheriff **preſcribed, that he and all Under-Sheriffs of the County have uſed to have** ſo much for Barr Fees, **and admitted good.**

See Fees (A) pl. 1. in the Notes. Br. Fees, pl. 6. cites S. C. ——Br. Preſcription, pl. 37. cites S. C

7. *Scire facias to repeal Letters Patents* of the King *of an Office in Ireland againſt J. N. becauſe the Plaintiff has other Letters Patents of it of elder Date*, &c. the *Defendant ſaid, That the Land of Ireland is, and Time out of Mind, has been a Land ſevered from the Realm of England, and ruled and governed by the Cuſtoms and Laws there, and that the Lords there of the King's Council have uſed in the Abſence of the King to chuſe a Juſtice, who has Power to pardon and puniſh all Felonies and Treſpaſſes, and to aſſemble a Parliament by Advice of the Lords and Commonalty, and make Statutes, and alleged* how *a Parliament* was *ſummoned, by which it was enacted, that thoſe who have Offices there ſhall be reſident upon it by a Day* &c. *or otherwiſe ſhall forfeit* his Office, and *that the Plaintiff was Officer* &c. *and did not come by the Day, by which the Office was void, and the King granted to the Defendant* &c. The other demurred upon the Plea; and by ſome the Preſcription is contrary to Reaſon, and * may bind the King, and therefore ill; But per Forteſcue, the Preſcription is void, and is in the King, and not in thoſe of Ireland; *as* † *Chancellor of England* who is only at Will *preſcribes to have Preſentation to all Benefices of the King* || *under a certain Sum*, and that Statutes of England, as of 10ths, 15ths &c. do not bind Ireland, becauſe it is ſevered, and does not come to Parliament; therefore *Quære Legem.* Br. Preſcription, pl. 4. cites 20 H. 6. 8.

* Orig. is (Poet lier) † S. P. Br. Preſcription, pl. 72. cites 11 E. 4. 2. || S. P. under 20 *Marks per Annum* when they void; Quod Nota; But it is uſed that he may make Collation or Preſentation to all which are *under* 20 *l. per Annum*. Br. Preſcription, pl. 86. cites 38 E. 3. 3.

8. In Debt it was awarded, that the *Sexton of an Abbey* cannot preſcribe that he and his Predeceſſors, Sextons of the Abbey of B. have *been Parſons of St. A. in B. and have impleaded and been impleaded Time out of Mind*; For Sexton cannot preſcribe; and grant to him by the King ſhall not ſerve to his Succeſſor; for he *has no Succeſſion*, quære of himſelf; For it ſeems that he is a Monk, and therefore a dead Perſon in Law. Br. Preſcription, pl. 99. cites 32 H. 6. 31.

9. *Prior dative and removeable* preſcribed *to implead and to be impleaded*, and to anſwer, and to be anſwered Time out of Mind, and a good Preſcription. Br. Preſcription, pl. 94. cites 2 E. 4. 17. and 44 E. 3. 4. accordingly.

10. My *very Tenant* may preſcribe *in his own Right*; per Choke; Br. Preſcription, pl. 28. cites 15 E. 4. 29.

And ſo may Tenant for Years; Per Choke; Quod fuit Conceſſum. Ibid.——But Tenants at Will cannot preſcribe in their own Rights, but in Right of their Lord; Per Cur. Br. Preſcription, pl. 76 cites 18 E. 4 3.——S P. per Choke. Br. Preſcription, pl. 28. cites 15 E. 4. 29.——They cannot preſcribe *in a Thing which ſhall endure for ever* &c. but in the Uſage and Cuſtom of the Vill they may; and ſo note the Diverſity Br. Preſcription, pl. 76. cites 18 E. 4. 3 ——*Tenant for Life cannot* preſcribe, *nor* a Man cannot preſcribe *againſt Tenant for Life*, and *where there is no Succeſſion nor Perpetuity* there can be no Preſcription. Br. Preſcription, pl. 77 cites 22 E. 4. 17.

Cro. E. 153. Honeywood v. Husbands. S. C. reports, That Gawdy held it to be good; But per Wray, the Plaintiff ought to have made a distinct Title to the Common, and not confounded them as he has done. Et adjornatur.

11. In Case for disturbing the Plaintiff in using his Common Plaintiff set forth, that A. was seised of certain Lands to which Common was appendant for Life, Remainder in Tail to B. and that they demised the Lands to the Plaintiff for Years; It was objected against this Declaration, that *Lessee for Life, and* he in *Remainder* cannot *prescribe together*, and cited 20 E. 4. 10. But per Popham and Gawdy, it is well enough; For all is but one Estate. 1 Leon. 177. Pasch. 31 El. B. R. Hauxwood v. Husbands.

12. A Copyholder prescribed, that every Copyholder *of such a Parcel of Wood had used* to cut down Trees there growing; and held good; and a Difference was taken between a Prescription for *Freehold* and for *Copyhold* Land; for *Custom* which concerns Freehold ought to be throughout the County, and cannot be in a particular Place; But a Prescription concerning Copyhold Land is good in a *particular Place*; for De Minimis non curat Lex, and the Law is not altered thereby, and it may be there is but one Copyholder there for which he might prescribe. And Custom to have *Profit Apprender, Privilege or Discharge*, may well be in a Particular. Cro. E. 353. Mich. 36 & 37 Eliz. C. B. Taverner v. Ld. Cromwell.

It is true, That Tenants in Antent Demesne may join in a Claim for a Common &c. because King cannot claim for them; But [as to] other Men, if [they are] Copyholders, they only must join that are Tenants to one Lord, and the Lord must prescribe for him and his Tenants; But the Lord of a Manor cannot prescribe for any of his Freeholders, but every of them must put in several Claims; For the Reason why the Lord may prescribe for his Copyholders, is, because the Freehold of the Land is in Law in him. Jo 276. in the S. C.

13. The *Inhabitants of Egham, and all the Towns in Surry, joined in a Claim to cut down all the Coppices at their Pleasure*, and to have Common for all Cattle Commonable, and Common of Turbary, and made Title by Prescription. Noy, the Attorney General said, That they ought not to have joined in One Claim. Jo. 275, 276. 8 Car. in Itin. Windsor, The Inhabitants of Egham's Case.

14. Prescription for a Thing Appurtenant to a Manor (as Liberty of Foldage of the Tenant's Sheep) was laid *in a Body Aggregate by a Que Estate*, and was held to be well enough. 2 Vent. 139. Hill. 1 W. & M. C. B. Dickman v. Allen ---- cites Keilw. 140 b. Co. Litt. 121. a. Cro. J. 673.

15. In Trespass of breaking his Close called Jenning's Key, the Defendant prescribed, that *Omnes ligei Domini Regis*, Time out of Mind &c. used to land Goods of too great Burden in the Lands adjoining; The Plaintiff had Verdict; But upon Exception in Arrest of Judgment, the Court held the Prescription good enough, and a Nil Capital was awarded. 3 Keb. 179. Trin. 25 Car. 2 B. R. Jennings v. Clenial.

(A. 2) Against whom.

1. THE *Lord* cannot prescribe *against his Villeins, nor his Tenant at Will.* Br. Customs. pl. 52. cites 13. E. 3.

2. A Man prescribed in the Bishop of C. and his Predecessors, that they had presented to such a Priory, as Patrons, Time out of Mind; Skipe said he cannot prescribe against the King; But Kirk said that he may *as well against the King as another Person*; For *otherwise the Lords shall lose their Franchise in Quo Warranto.* Br. Prescription pl. 52. cites 38. Ass. 22.

3. Debt

3. Debt of 3 l. for Pound Breach, becauſe the Cuſtom of his Manor of C. is *that the Lord for the Time being has had 3 l. for Pound Breach* Time out of Mind, and that the Defendant was Diſtrained, and ſhewed by whom, and for what Cauſe, and he broke the Pound, for which he brought his Action; and by all the Juſtices the Cuſtom *is not good to bind a Stranger*; For it cannot have Lawful Commencement, *But* ſuch Cuſtom upon the Tenants of the Manor *may be good*; For it may be that it was reſerved upon their Tenures in Principio. Br. Preſcription pl. 106. cites 11 H. 7. 13, 14.

4. As where the *Tenants grant to the Lord, that when their Rents are Arrear, they ſhall render* 20 s. Ibid.

5. In Replevin, the Defendant avowed for Damage-feaſant; The Plaintiff juſtifies, For that he had a Cloſe adjoining to the Defendant's Cloſe, And that the Defendant, and all the *Occupiers* of the ſaid Cloſe, Time out of Mind, had *uſed to repair the Fences between the ſaid Cloſes*, and for not ſufficient incloſing his Beaſts entered &c. Iſſue was taken upon the Preſcription, and found for the Avowant; It was moved in Arreſt of Judgment, that the Preſcription, That *every Occupier* &c. is too general, for Tenant at Will, Tenant at Sufferance, or a Diſſeiſor are Occupiers, and for this Reaſon it was held, That the Preſcription of was not good, though being after a Verdict, it is aided by the Statute. Jeofails. Cro. E. 445. Mich. 37 & 38 El. C. B. Auſtye v. Fawkener.

So in an Action on the Caſe, the Plaintiff ſet forth, *That he had been* 3 *Years laſt paſt an Occupier* of ſuch a Paſture, *and that Defendant occupied ſuch another Cloſe, and that Omnes alii Occupatores of the Defendant's Cloſe did uſe to ſhut the Gates*; This was found for the Plaintiff, and it was moved in Arreſt of Judgment, That Omnes Occupatores is not good; But it was adjudged, that notwithſtanding this Exception, without alledging any [thing more] than that all the Occupiers had uſed to do it, it was good. Cited by Bridgman Ch. J. Cart. 32. Mich. 17. Car. 2. C. B. as the Caſe of **Gunter v. More**, and that it was by the Advice of all the Judges.

(B) *Of what Thing* it may be. [And what ſhall be ſaid a good Preſcription.]

1. **A Man may preſcribe** to be Tenant in Common **with another** of Land. 8. H. 6. 16. b. Br. Preſcriptian, pl. 19. cites S. C.

As if one and his Anceſtors, or thoſe whoſe Eſtate he has in a Moiety have held the ſame in common with the other Tenant or his Anceſtors, or with thoſe whoſe Eſtate he has Pro-Indiviſo Time out of Mind &c. But *Joint Tenants* cannot be by Preſcription; Becauſe there is Survivor between them, which there is not between Tenants in Common. Co. Litt. S. 310. 195. b.

2. **But a Man cannot** make Title to Land by **Preſcription. Brook Preſcription. * 122.** He cannot make Title to the Land of Mind &c.

itſelf [as] that he and his Anceſtors, or thoſe whoſe Eſtate &c. have been ſeiſed Time out Br. Preſcription. pl. 19 cites 8 H. 6. 16. and cites Tit. Treſpaſs. pl. 122 —— [* There are not ſo many Pleas in Preſcription, but it ſeems it ſhould be (pl. 19) and that the (122) is a Miſtake occaſioned by the Plea out of (Treſpaſs 122) which Brooke cites.

3. It ſeems, That a *Dean and Chapter* may preſcribe *to make Induction and Inſtallation*, as to them belonging, Time out of Mind. Vide 9 H 4. 9. a. b. The Biſhop of Coventry and Litchfield v. Weſtwood.

4. Maſter of an Hoſpital preſcribed in Writ of *Annuity of the Seiſin of the Annuity againſt a Parſon and his Predeceſſors*, Time out of Mind, and good, and ſo charged the Parſon, and no Land but the Church. Nota. Br. Preſcription, pl. 21. cites 19. H. 6. 39. Br. Aid pl. 78. cites S. C.

5. Where *Rent* is *granted by Fine or Patent* of the King before the Time of Memory, the Party may *Count by Preſcription*. Per Newton. Br. Preſcription, pl. 22. cites 19 H. 6. 75.

6. It is a good Cuſtom to Preſcribe *That where a Swan comes upon the Land of any adjoining to the River Thames, and makes a Neſt there, and has three Cygnets, that the Owner of the Swan ſhall have two of the beſt, and the* One may preſcribe to have *Game of Swans within*

his Manor, as well as to have Park or Warren. 7 Rep. 16. b. Trin. 34 Eliz.

the Owner of the Land the third; For otherwiſe the Owner of the Land may Chace them; quod nota; and here in a Particular County. Br. Preſcription pl. 100. cites 2. R. 3. 15.

The Caſe of Swans.——*And* he that has ſuch Game of Swans, may preſcribe, *that his Swans ſhall ſwim within the Manor of another*, Ibid. 16. b. 17. a.— And in that Caſe a Preſcription being laid for Wild Swans unmarked, Nidificantes &c. it was reſolved that if the Defendants had alledged, That within the ſaid Creek there had been Time out of Mind a Game of *wild Swans unmarked, Nidificantes & Gignentes*, and then *preſcribed that ſuch Abbot and all his Predeceſſors &c. had uſed*, Time out of Mind, *to have and take to their Uſe ſome of the ſaid Game* of wild Swans *and their Cygnets within the ſaid Creek*, this had been good; For though the Cignets are Royal Volatiles, yet in ſuch a Manner a Man may preſcribe in them; Becauſe this may have a lawful Commencement by Grant of the King, and conſequently a Man may preſcribe in them within a certain Place, ſince it may have a lawful Commencement. Ibid 18. a. b

So in a Vill *for Toll thorough*; For this is quid pro quo. Ibid.

7. It is a good Preſcription *to have a Halfpenny of every one who goes over his Land*; For this is *Toll Traverſe*. Br. Preſcription. pl. 57. cites 5 H. 7. 9.

Br. Cuſtoms. pl. 30. cites 21 H. 7. 13 15 S. C.

7. It is a good Preſcription, *That if the Tenants of the Manor do not pay their Rent by one Year, nor any Diſtreſs can be found there by one Year, that the Lord may re-enter*, and this is good for the Generality; For tho' ſome do not pay, by which the Lord enters, yet it may be, that there are others who pay well. Br. Preſcription pl. 36. cites 21. H. 7. 15.

And Kingſmill J. thought this Caſe not like the Caſe of 14 H. 4. fol. 2. Recordare de Glouceſter Fee; for there the Lord of the Honour ſhall have *Relief*, *Heriot*, and other caſual Profits for every Alienation, and there *Unity of Poſſeſſion* in the Lord ſhall not hurt the Cuſtom, becauſe the *Cuſtom runs in a Generality*, that is, throughout the whole Honour; and where the Cuſtom runs in ſuch Generality *throughout all and every Part of a Place*, as *Gavelkind*, *Borough Engliſh*, and the like, In thoſe Caſes, Unity of Poſſeſſion is not material; but in the Caſe above, the Cuſtom cannot run in ſuch Generality; and for this Reaſon the Preſcription is not good. And alſo becauſe every * Preſcription ought to *depend on* a Thing which may have *perpetual Continuance*, whereas between Leſſor and Leſſee for Term of Life, or Years, or at Will, the Leſſees have only an Eſtate determinable within a Time certain. Keilw. 80. 21. H 7. Talbot's Caſe.—*But* Frowike Ch. J. held this a good Preſcription, and diſtinguiſh'd between *one ſingle Leaſe of one ſingle Part* and ſeveral of ſeveral Parts; that tho' in the firſt Caſe on the Determination of ſuch ſingle Leaſe, an Interruption would be of ſuch Preſcription, becauſe it referr'd only to that particular Parcel, but here, notwithſtanding ſuch Determination, there are other Lands in Leaſe, upon which the Cuſtom may depend and take Place, it extending throughout the whole Manor, and ſo makes it ſquare with the Caſe of Glouceſter Fee cited by Kingſmil J. Keilw. 8. Talbot's Caſe.—Br. Preſcription. pl. 36. cites 21 H. 7. 15. S. C.— Br. Cuſtoms. pl. 30. cites S. C. —— * It is an infallible Rule, that if a Man has a Thing of Common Right, and by Preſcription, he has Eſtate in Fee Simple in the ſame Thing. Dav. 9. b.

9. Preſcription by a Lord of a Manor was *to have after the Death of every Tenant for Life or Years, or at the Will of the Lord*, for every Tenure held by ſuch Tenant at the Time of his Death, his beſt Beaſt, *in the Name of a Heriot, and to ſeiſe the ſame.* Kingſmill and Vavaſor J. thought this not a good Preſcription. But Frowike Ch. J. Contra. Keilw. 79. b. Mich. 21 H. 7. Talbot's Caſe.

In Replevin, the Defendant avow'd, that J. S. held of him by Homage, Fealty and Rent, and *at every Alienation of his Tenant* that he and his Anceſtors have uſed *to have the beſt Beaſt, if the Alienee does not give Notice to the Lord in the Life of the Alienor*; and that his Tenant alien'd to the Plaintiff and died, and the Plaintiff did not give any Notice in the Life of the other. And the beſt Opinion was, that this is a good Preſcription; for it may have lawful Commencement, as by Condition or Reſervation at the Making of the Tenure. Br. Preſcription. pl. 58. cites 8 H. 7. 10.

See (Y) pl. 27. S. C. at large.

10. Preſcription *to diſtrain in his own Land* is good. Br. Preſcription. pl. 1. cites 26 H. 8. 5.

My Lord Ch. J. Hobart ſaid, that in the Caſe of Preſcription, *Tithes* differ

11. Where a Man preſcribes *to go quit of Tithes for his Lands in D.* where all others of D. pay Tithes, this is void; for *Cuſtom cannot be Particular*, but ought to be throughout a Country or Vill. Br. Preſcription. pl. 93. cites Doct. & Stud. lib. 2. cap. 55.

from all other Caſes in Law; For whereas Preſcription and Antiquity of Time fortifies all other Titles, and ſuppoſes the beſt Beginning that Law can give them, yet in Caſe of Tithes it is clear contrary; for tho' the Grant of a Parſon, Patron, and Ordinary, is good in itſelf without any Recompence or Conſideration, yet when it runs to Preſcription it dies and periſhes; whereof no other Reaſon is given but that our Books ſay, that a Man may preſcribe *In modo Decimandi*, but not in *Non Decimando*, and this is *In favorem Eccleſiæ*, leſt Laymen ſhould ſpoil the Church. But he gives another Reaſon, That the Law violently preſumes that a *Layman* cannot be diſcharged abſolutely, and ſo will not allow the Preſcription,

tion, but will prefer the Good of Religion and the Church to the Benefit of a private ſingle Perſon. Hob. 297. Mich. 15 Jac. in the Caſe of Slade v. Drake.

12. A Man can't preſcribe in *Things which touch the Crown.* Br. Lect. —— Stat. Limit. 39.

13. In Treſpaſs of taking his Goods, the Defendant ſet forth, That the City of York was an ancient City, and that there *were Mayor, Bailiffs, and Citizens in the City Time out of Mind till* 1 *R.* 2. *who then incorporated them to be Mayor, Sheriffs, and Citizens; and that Time out of Mind there had been a Cuſtom to ſeiſe Wares foreign bought and foreign ſold within the Liberty of the City of York, as forfeited*; and becauſe the ſaid Goods were Wares foreign bought and foreign ſold, he, as Servant to the Mayor &c. juſtified the Taking. And this Manner of Preſcription was travers'd and allow'd. D. 279. b. pl. 10. cites it as a Precedent. Bendl. 21. pl. 36. Paſch. 28 H. 8 Rot. 351. Guſton v. Shittington; the Pleadings but nothing more. D. 279. b. Marg. pl. 9. [but it is miſplac'd, and ſhould be pl. 10.] ſays, that Mr. Glanvill in his Reading, Feb. 5 Car. ſaid, That he doubted of this Caſe; for he held, that the Preſcription is ill, and ſays, that he had ſearch'd for the Rule of this Caſe among the Records but could not find any ſuch; and he grounded his Reaſon upon the Statute of 9 E. 3. cap. 1. for it is expreſly contrary to this Caſe. —— [That Statute does not concern the Manner of the Preſcription, but only prevents ſuch Forfeitures.]

14. A *Body Politick* or Incorporate may commence and be eſtabliſhed by Preſcription. Co. Litt. 250. a. S. 413.

15. In Action upon the Caſe the Plaintiff claim'd ſuch a Cuſtom in the Town of T. *that he* and his Anceſtors *had a Bakehouſe within the Town* to bake White and Houſhold Bread, *and that* he had ſerved all the Town with Bread, and that *no other could uſe the Trade without his Licence*, and that the Defendant had uſed the Trade without his Licence; upon which the Defendant demurr'd. And after Argument it was adjudg'd, that the Action will not lie. Ow. 67. Hill. 32 Eliz. B. R. Sir George Farmer v. Brook. Le. 142, 143. Trin. 31 Eliz. B. R. S. C. But it does not appear there, that any Judgment was given. — but Cro. E. 203. Mich. 32 & 33 Eliz. B. R. S. C. ſays, that it was adjudg'd for the Plaintiff; for the Cuſtom is between the Lord and his Tenants, which by Indenture may have a good and lawful Beginning, and peradventure their Lands were given to them upon this Condition; and it is reaſonable that the Lord maintaining a Bakehouſe, that for this Cauſe they ſhould have reaſonable Recompence, and the Plaintiff had Judgment. — S. C. cited 8 Rep. 125 b. Hill. 7 Jac. in the City of London's Caſe; and ſays, it was adjudg'd a reaſonable Cuſtom by Sir Chriſtopher Wray & tot. Cur. and yet this Cuſtom reſtrains a Man to uſe his Trade within a certain Place.

16. In Treſpaſs for entring and cutting down the Plaintiff's Wood, the Defendants alledge a Preſcription &c. to take the *Underwood growing on the Lands of the Plaintiff adjoining to their Land, to make the Hedges of that Land on which the Wood did grow.* It was argued, that this Preſcription is not good; becauſe it ſounds in Charge, and is not for the Benefit of him who preſcribes; For if the Defendants did not repair the Wood, they would receive no Damage. Sed Adjournatur. 1 Leon. 313. Mich. 32 Eliz. B. R. Leigh v. Okeley.

17. One cannot have a *Court* by Preſcription, *unleſs where he cannot have it otherwiſe.* Per Walmſley J. Cro. E. 792. Mich. 42 & 43 Eliz. C. B. in the Caſe of Pill v. Towers.

18. In Replevin &c. the Iſſue was upon a Preſcription for every Yard-Land within ſuch a Vill to have *Common for* 12 *Cows*, and for a Quarter of a Yard-land Common for 3, and for Half a Quarter for a Cow and an Half, and a Verdict for the Plaintiff. It was objected, that a Man could not preſcribe to have Common for a Cow and an Half; but adjudg'd, that this being on a Verdict it ſhall be intended ſo as it can be (i. e.) Common for Half a Year, or that two Men had but one Cow, and ſo each of them had Half a Cow. Sid. 226. Mich. 6 Car. 2. B. R. Ellard v. Hill. If in Replevin ſo much of the Preſcription be found as ſerves the Turn of the Party, tho' all be not found, it is ſufficient. And here the Replevin was brought for one Cow only, and the Plaintiff pleading a Preſcription for four Cows and an Half is a good Juſtification for putting in of one Cow. Per Wirdham and Twiſden Cæteris Abſentibus, and they gave Judgment for the Plaintiff. Lev. 141. Hill v. Ellard —— It was urg'd in Arreſt

Arreſt of Judgment, that it ſhould have been ſaid, For the Half-Feeding of a Cow; but the ſaid Juſtices held, that the Avowry being but for one Cow, it was ſufficient, whether it was good for the Half Cow or not. Keb. 793. S. C. by Name of Hill v. Allen.

They muſt have a reaſonable Cauſe of Commencement.

19. Preſcriptions muſt have a *lawful Beginning*. Vent. 387. Potter v. North.

Dav. 9. b. —— Every Preſcription to charge a Subject with a Duty, muſt impart a Benefit or Recompence to him, or elſe ſome Reaſon muſt be ſhew'd Why a Duty is claim'd. Per Cur. 4 Mod. 323. Mich. 6 W. & M. B. R. in the Caſe of Warrington v. Moſeley. —— Preſcription muſt be in a Thing done. Per Anderſon Ch. J. Godb. 16. Paſch. 25 Eliz. C. B. in Skipwith's Caſe.

20. In Treſpaſs for *taking* &c. his *Beaſts*, the Defendant juſtified, for that he had a *Driſt of Common*, to ſee that it was not ſurcharged, and that the Beaſts were there ſurcharging the Common; and therefore he *took and detain'd* them *'till 5 l. paid in Satisfaction of the Treſpaſs*. Upon Demurrer it was objected, That a Preſcription for Drift of Common doth not warrant a Diſtreſs unleſs he had preſcribed to diſtrain alſo; but adjudg'd, that 'tis a Thing of Common Right for the Preſervation of the Common. 2 Lev. 87. Paſch. 25 Car. 2. B. R. Bromfield v. Teigh.

25 One preſcrib'd, that *by* Reaſon of *Repairing a Chapel of Eaſe* he had been Time out of Mind *exempted from contributing towards the Repairs of the Church*, and this was held a good Preſcription. Freem. Rep. 468. pl. 644. Mich. 1678. Wiſe v. Green.

22. A *Vicar* libell'd in the Spiritual Court for a Stipend of 4 l. per Annum, claiming it by Preſcription, and Prohibition moved for upon Suggeſtion that *none can claim* a *Stipend* by Preſcription *but a Corporation* or Body Politick; And ſo ſaid Holt, and that a Sheriff, tho' removable at the Will of the King, may claim a Fee as incident to his Office. But againſt the Prohibition was cited Litt. Rep. 19. 51. 12 Mod. 249. Mich. 10 W. 3. Birch v. Wood.

(C) *Who* may be *bound by* a Preſcription.

1. A Preſcription does not run againſt the King there where he has Right. 38 Aſſ. 22.

2. As if the King was Patron of Right of a Chapel, another cannot have it by Preſcription, and ſo bind the King. 38 Aſſ. 22.

3. A Corporation cannot preſcribe to be diſcharged of the ancient Grand Cuſtom, nor to receive it, becauſe it is an annual Revenue of the Crown, and a Caſualty, as Waif and Stray &c. M. 6 Ja. Scaccario. Reſolved.

And yet it was agreed, That a *Parſon of a Church may be charged* of

4. A Man *ſhall not charge the Heir in Annuity by Preſcription, that his Anceſtors have paid it Time out of Mind.* Br. Preſcription, pl. 11. cites 49 E. 3. 5. Per Belk. & tot. Cur.

Annuity by Preſcription, but *as a Corporation* as it ſeems. Ibid.

5. It is ſaid that a *Vill may be bound* by Preſcription *to provide a Pillory and Tumbrel*, and that every Vill is bound of Common Right to provide *a Pair of Stocks*. Quære. 2 Hawk. Pl. C. 73. cap. 11. S. 5.

(D.) *What*

(D.) *What* ſhall be a *good* Preſcription. Where it is *uncertain.*

1. IF Tenants of a Manor **preſcribe,** that they ought not to pay a Fine for renewing their Copyhold Eſtates more than two Years Rent, * but ought to pay the Rent of two Years, or leſs; **this is not a good Preſcription for the uncertainty; for ſometimes they are to pay two Years Rent, and ſometimes leſs. M. 37 El. B. R. between** *Greene and Bury.* **Per Curiam.** * Fol 265.

2. **If a Man preſcribes** to pay a Penny or Thereabouts, for Tithes **of every Acre of arable Land, this is not good Preſcription for the uncertainty. M. 7 Ja. B.** *Allen's* **Caſe. Per Curiam.**

3. Preſcription for *Common ſans Number* appurtenant to Land, without ſaying Levant and Couchant, is ill; you can put in no more than is proportionable to your Land. Per Twiſden J. who cited the Caſe of **Waſſelden v. Stoneby** in Glyn's Time, where ſuch Preſcription without *Levant and Couchant* was held good after a Verdict; but if it had been upon a Demurrer, it had been otherwiſe. Mod. 7. Mich. 21 Car. 2. B. R. in Caſe of the Corporation of Derby. Saund. 346. 2 S. C.—2 Saund. 4.—2 Keb. 527. 550. 570.—2 Lev. 246.

4. Treſpaſs for digging Turf; the Defendant pleaded that he is ſeiſed of an ancient Houſe, and preſcribed *to have as much Turf in one Year as two Men could dig in one Day,* as belonging to his Meſſuage. The Plaintiff demurr'd, becauſe he did not ſhew that the Turf was to be burnt in the Houſe; and as it is laid here, it may be ſold, tho' he claims it as appurtenant to his Houſe. But it was anſwered and reſolved, That when the Thing is uncertain, as Eſtovers, it ought to be applied to the Houſe to aſcertain it; but here it is certain enough in itſelf, ſcil. as much as two Men can dig in a Day; and for Authorities were cited Raſt. Ent. 539. and 1 Cro. **Spooner v. Day**; and Judgment was given for the Plaintiff. Lev. 231. Hill. 19 & 20 Car. 2. Hayward v. Cunnington. Sid. 354. Hill. 19 & 20 Car. 2. B. R. S. C.

(E.) *Againſt* the *Publick Good.*

1. A MAN **cannot preſcribe** to do **a Thing which is** a Nuſance; for **it is againſt the Publick Good. Hill. 15 Ja. B. R. adjudged Trin. 16 Ja. B. R. in the Caſe of the** *Dovecote.* **Reſolved per totam Curiam.** S. P. Jo. 222. Per Crook. Paſch. 6 Car in Caſe of James v. Hayward.—S. P. 2 Roll. R. 31 & 32. Trin. 16 Jac. in Caſe of Dewel v. Sanders.—Cro. J. 491. S. C.

2. As **he cannot preſcribe** to lay Logs of Wood in a common Highway ſcambling about, and ſuffer them to continue there for a long Time; **for this is a Nuſance, and ſo againſt the Publick Good. Hill. 15 Ja. B. adjudged between** Cro. J. 446. Mich. 15 Jac. Fowler v. Saunders. S. C.

3. **If a Man preſcribes that he and his Predeceſſors** who have been ſeiſed of the Manor of *Coleherbert,* have been exempt from the Government of the Mayor of the City of London, **and of all his Officers, this is not a good Preſcription; for by this Means they of this Liberty ſhall be without Government, which is againſt Law, and therefore void. H. 43 El. B. R. The Count of** *Shrewsbury's* **Caſe. Adjudged per Curiam in Quo Warranto.**

4. So **it is not a good Preſcription, that he and his Predeceſſors, ſeiſed of the ſaid Manor, have uſed to have** Aſſiſe of Bread and Ale, and

and alſo to have the Search of Weights and Meaſures, and to have the Puniſhment of them; for this belongs properly to a Court Leet to puniſh; and alſo he has not any Court to puniſh ſuch Offences by Preſentment or otherwiſe. Hill. 43 El. B. R. The Count of *Shrewsbury*'s Caſe. Adjudged per Curiam in Quo Warranto.

To repair a *Key*, and to have *Toll* of all Goods brought within the River, is ill; but to have *Toll of all Goods put to Land* within the Manor, tho' not at the Key, is good. 2 Lev. 96. Hill. 25 & 26 Car. 2. in Caſe of Prideaux v. Marne, cites Trin. 7 W. 3. C. B. * Criſp v. Belwood.——— * 3 Lev. 434. S.C.

5. It is a good Preſcription for the Corporation of Dublin, that they are Owners of the Port, and that they maintain Perches in the ſaid River, and direct the Ships in the deep Chanel, and that they maintain the Key and Crane; and that in Conſideration of this they preſcribe to receive of all Merchandizes in the ſaid Port 3 d. of the Pound; for here is Quid pro Quo. M. 6 Ja. Scacc. Reſolved.

Br. Leet, pl. 10 cites S.C.

6. A Man cannot preſcribe *to be diſcharged of his Appearance at the Leet, by being ſworn before the Conſtable and Portreeve*, nor ſuch like. Br. Preſcription, pl. 13. cites 2 H. 4. 15.

7. *For Inhabitants to dance in another's Soil Omni tempore Anni* is a good Cuſtom; and tho' pleaded by Way of Preſcription, yet Judgment was given on a Verdict for Defendant in Treſpaſs, tho' the Plaintiff moved this in Arreſt of Judgment, and a Caſe cited where it was adjudged upon a Demurrer, that it ought to have been pleaded by Way of Cuſtom. But per Cur. Tho' perhaps it had been ill upon Demurrer, yet Iſſue being taken and found by Verdict, it is good; and Defendant had Judgment. 1 Lev. 176. Trin. 17 Car. 2. B. R. Abbot v. Weekly at Oxford.

(F.) Againſt the *Law of God*.

Br. Preſcription, pl. 91. cites S. C.

1. A MAN may preſcribe to have a Way over a Church-yard, tho' it be Sanctuary. 18 E. 4. 8.

2. So to have a Way thro' a Church. 18 E. 4. 8. Brook Preſcription 91.

3. It is no good Preſcription *that the Lord of a Vill ſhall have Fine of every Tenant who marries his Daughter without his Licence*; For it is againſt the Law of Matrimony. Br. Preſcription, pl. 101. cites Littleton, tit. Villeinage.

(G) Againſt the *Law of Reaſon*.

See Cuſtoms (E) G)

1. A Preſcription againſt Reaſon is not good.

A Vill cannot preſcribe *to keep ſuſpected Perſons in their Gaol of their Vill 3 Days before they carry them to the Common Gaol*; For then they were *irrepleviable by thoſe 3 Days* where they ought to be repleviable immediately by the Law, and alſo if they may ſo preſcribe by 3 Days, they may do it for three Years which is not reaſonable; Per Brian Juſtice. Br. Preſcription, pl. 80. cites 22 E. 4. 43.

2. A Corporation preſcribes to arreſt a Man for Suſpicion of Felony, and impriſon him for three Days, and then to carry him to the next Gaol, and this is againſt Reaſon. 22 E. 4. 43.

* In *Treſpaſs* for Hunting in his Warren, and taking away

3. A Man cannot preſcribe to have a * Chace or Warren in any Land but in his Demeſnes, or in Land within his Fee and Seigniory. 3 H. 6. 13. b.

30 Hares

30 Hares and 300 Conies. Defendant *juſtified*, becauſe he had *Common* in the Place where &c. *to a Meſuage and 6 Yard Lands for 240 Sheep, and that he and all thoſe whoſe Eſtate* he has Time out of Mind, *have uſed at ſuch Time as the Common was ſurcharged with Conies to Hunt, Kill, and carry them away as to his Meſuage appertaining.* The Plaintiff demurred, becauſe a Man cannot make ſuch a Preſcription in the free Warren and Freehold of another Man. And 2dly, becauſe a Man cannot ſo preſcribe to Hunt, Kill, and carry away his Conies as Appertaining to his Meſuage; But a Man may preſcribe *to have ſo many Conies to ſpend in his Houſe*; And for theſe Reaſons the Preſcription in the principal Caſe was held for a void Preſcription, and Judgment given for the Plaintiff. Godb. 184 pl. 263. Hill. 9 Jac. B. R. Samford v. Havel.

4. If Lord of a Vill **preſcribes** to have a Warren in all the Land within the Vill held of him, **this is not good; For Conies dig Holes in the Land. 45 E. 3. 13. b. Contra 44 E. 3. 12. b. 3 H. 6. 13. b.** Fol 266. In Quo Warranto the Defendant claimed the Liberty of *free Warren in R.* and pleaded that he was ſeiſed in Fee of the Manor of R. whereof the Locus in quo &c. was Parcel, and ſo preſcribes to have Liberty of Free-Warren *within all the ſaid Manor and the Demeſnes thereof, ſo that none ſhall chaſe any Game of Warren in the ſaid Manor and Demeſnes thereof without his Leave.* Iſſue was taken, that he and all thoſe whoſe Eſtate &c. had no free Warren within the ſaid Manor and Demeſnes thereof, and found for the Defendant. It was objected, that this Preſcription was not good, viz. to have free Warren in the Manor and in the Demeſnes of the Manor; for though he might preſcribe to have it in his own Demeſnes, yet he cannot preſcribe to have it in the Lands of others his Freeholders; neither ought he to preſcribe to have it as Appertaining to his Manor; but to this it was anſwered by Roll, That a Preſcription to have free Warren in his Manor is good, as well in Lands of Freeholders as in the Demeſnes; For being by Preſcription it ſhall be intended, that this Liberty was before there were any Freeholders, whoſe Eſtates were afterwards extracted out of the Demeſnes of the Manor after the Beginning of this Preſcription. Cro. C. 311. Trin. 9 Car. B. R. The King v. Sherington Talbot —— This Caſe is abridged by Hughes, pag. 1499. pl. 26. as reſolved, and cites 9 Jac. B. R. The King v. Sherington. Cro. 1. par. 227.—And Nelſ. Abr. pag 1278. pl. 11. taking it from Hughes, cites the Caſe as in 2 Cro 227. **Sherington's** Caſe, and that it was adjudged ——[But nothing more appears to have been ſaid in the Report of Croke as to this Point than is mentioned to have been anſwered by Roll; nor does any Opinion of the Court as to this Point appear in the Report of the S.C. Jo. 320. The King v. Sherington Talbot.]

5. In Replevin for taking a Sail of a Ship; the Defendant avowed, for that he was ſeiſed in Fee in the Manor of Padſtow, where there is a *Common Key* extending from ſuch a Place &c. *for unlading Salt, and* that he and all thoſe &c. have uſed to repair the ſaid Key, and have kept a Buſhel for meaſuring Salt, and *and have had of every Ship, arriving there laden with Salt, one Buſhel* of Salt, and becauſe a Buſhel of Salt was not paid according to the Preſcription, he avows the taking the Sail: The Plaintiff *pleads in Bar* to the Avowry, *that the River* on which this Key is pretended, *is* a great River *of ten Miles in Breadth, and that the Key extends but half a Mile*, and *that the Ship arrived ſeven Miles diſtant*; and traverſed that it arrived at the Key within the ſaid Manor. Upon Demurrer it was inſiſted for the Avowant, that it is not material whether the Ship arrived at the Key, becauſe it might come thither when the Mariners pleaſed; But per Hale Ch. J. This Preſcription is only for a Wharf, and not for a Port, and here ought to be reaſonable Recompence for the Preſcription, and he who has a Port ought to provide Weights, Meaſures, and other Things; And in this Caſe the Avowant might as well preſcribe to the Confines of France as to ſeven Miles diſtant from the Key, and therefore it is not a good Preſcription, And it is not ſaid what Salt was in the Ship, and there might not be more than two Buſhels. And therefore Judgment was given for the Plaintiff. Raym. 232. Mich. 25 Car. 2. B. R. Prideaux v. Warne.

Another Exception was taken to this Preſcription, it being to diſtrain the Ship in Default of Payment of Toll, whereas the Maſter of the Ship is in no Default, but the Owner of the Goods. Hale Ch. J. ſaid, there are 3 Intereſts in a Port. 1. The Propriety of it. 2. The publick Intereſt of it for all the King's Subjects to come thither. 3. The Intereſt of the King to guard it And it having been inſiſted, That a Man may preſcribe for a Thing out of his Manor, as in Sir **Henry Conſtable's** Caſe for Wreck as far as he could ſee &c. Hale ſaid, The Caſe of Wreck differed much from this; For that is Nullius in Bonis. Sed adjornatur. Freem. Rep. 355. pl. 447. Mich. 1673. S. C.

See Customs (I)

(H) Prescription. Against the Law *of the Land.*

1. A Sheriff **of a County cannot prescribe** to have Gifts, or to take any thing to his own Use as Sheriff; **For he ought to take nothing for doing his Office.** 42 E. 3. 5.

Noy. 147. S. C. and S. P. agreed by the Court, and so the Mayor's

2. **The** Mayor of London **may prescribe** to have a **Court of** Chancery **in London** of Matters tried in the Court of the Sheriffs of London, **though such Court cannot be granted by the Letters Patents of the King, M. 5 Ja. between** *Andrew* **and** *Webb*, **per Curiam.**

Court of London, called the *Mark Court*, because the Mayor may mark any Cause in the Sheriff's Court before Judgment, altho' it be after Verdict, and may examine it. Cites 10 E. 6. 14. and that in the principal Case a Procedendo was granted to the Mayor's Court.

Roll R. 109. S. C.—Hob. 63. S. C. and there it is said that the Courts of Equity of London and

3. **The** Mayor and Citizens of York cannot **prescribe** to have a Chancery there, **and to award such Process as the Court of Chancery at Westminster awards; Because it is greatly dangerous that such Petty Corporations should have such Courts. M. 13 Ja. B. per Curiam, præter Warburton, between** *Martin and Marshal.* **Vide the same Case Hobart's Reports,** 86.

the Cinque Ports are by reason of their having Acts of Parliament for them.—No Man can claim to *hold a Court of Chancery* by Prescription, because every Prescription is against Common Right, and a Chancery Court is founded upon Common Right, and is by the Common Law. Godb. 262. pl. 360. Mich. 13 Jac. B. R. The Mayor of York's Case.

(I) Against *a Statute.*

2 Inst. 20, 21.

1. A **Man** cannot **prescribe or allege a Custom against a Statute; Because it is Matter of Record, and the most high Proof and Matter of Record in Law. Co. Litt.** 115.

2 Inst. 21. S. P. as for Example, They of London claim by

2. **A Man** may **prescribe or allege a Custom against an Act of Parliament,** when the Prescription or Custom is saved or preserved by another Act. **Co. Litt.** 115.

Custom to give Lands in Mortmain without Licence, because this Custom is saved and preserved not only by Magna Charta, cap. 9. but by diverse other Statutes & sic de Cæteris.

There is a Diversity between Statutes that be in the Negative; For if a Statute in the Negative be declarative of the ancient Law,

3. A Statute in the Affirmative **does not toll a Custom or Prescription. Co. Litt.** 115.

4. [As] **a Man may prescribe** to cut his own Wood within a Forest without the View of the Forester, though the Statute of 34 E. 1. provides, that none shall **cut any Tree, though his own Tree, within a Forest without the View of the Forester; Because** this Act is but in Affirmance of the Common Law. 16 **El. Scaccario. Adjudged. Co. Litt.** 115.

that is in Affirmance of the Common Law, there a Man may as well prescribe or allege a Custom against such as he may against the Common Law. Co. Litt. 115 a.———But Lord Richardson denied this Diversity, and said, That in neither of the Cases a Prescription can be against a Negative Statute, which Mr. Attorney also affirmed, and therefore held it very strong, that a Prescription could not be to fell and sell Wood without View of Foresters, unless it were with the Help of an Allowance and then we must intend that there was a Charter upon which the first Allowance was made, because the Words are expresly negative, [viz.] Nec potest aliquis aliquid dare vel Vendere sine Licentia Domini Regis. Jo. 270, 271. 8 Car Itin. Windsor in Lord Lovelace's Case.——But Ibid. 289. The Counsel said, They took Ld. Coke's Difference to be a good Difference between a Statute which is only declarative of the Common Law, and a Negative Statute which is introductive of a new Law; that against the

the laſt no Preſcription is good, but in the other Caſe no Alteration is made. ——— And 2 Buls. 36. Mich. 10 Jac. in Caſe of **Jones v. Smith**, it is ſaid Arg. that a Man may preſcribe againſt a Statute in the Affirmative, and cites 11 H. 4. 16. Stamford, fo. 38. and Fitzh. Nat. Brev. fo. 91. and 30 Aſſ. 38.

A Man may preſcribe *to hold a Leet oftner than twice a Year, and at other Days* than are ſet forth in the Statute of Magna Charta, cap. 35. Becauſe the Statute is in the Affirmative. 2 Le. 28. The Queen v. Partridge —Cro. E. 125. Hill. 31 Eliz. B. R. S. C.—S. P. but if it was a Leet by Grant, the Defendant in an Avowry for an Amerciament in the Leet muſt have ſhewn that it was held within a Month after Eaſter &c. Cro. E. 245. Hill. 33 & 34 Eliz. B. R. Porter v. Gray ——— Kelw. 148. a pl. 26.——3 Le. 179. Lawſon v. Hare.

Preſcription for the *Inhabitants of the Towns in Surry to cut down Wood in the Foreſt* is not good; For per Noy Attorney General, there can be no Preſcription ſince the Statute of *Charta de Foreſta cap.* 4. which is, *That all Waſts &c done after that time without the King's Licence ſhould be puniſhable*; Nay, a Preſcription to fell Wood *per Viſum Foreſtariorum vel Verdariorum* is not good, but it muſt be *per Viſum & Allocationem* Foreſtariorum & Verdariorum; For if it be per Viſum only, then if the Foreſter or Verderor be required to come and view it, and do not come, you may cut it down without View. Jo. 275. 8 Car. In Itin. Windſor. The Inhabitants of Egham's Caſe.———But Ibid. 276. in a Memorandum, cites Sir Tho. Palmer's Caſe 5 Rep. 25. a. that there is no Diverſity where the Wood is to be taken per Viſum, or per Viſum & Allocationem; For that *in both Caſes upon Requeſt made and Refuſal, the Party may take them without View or Delivery* ————Noy cited a Caſe to be reſolved 6 Jac. that *in a Chaſe* a Man might preſcribe to cut down Wood, becauſe they are not within the Statute of Charta de Foreſta; whence it was ſtrongly inferr'd, that it could not be preſcrib'd for within a Foreſt. Jo. 276.

5. Treſpaſs, becauſe the *Defendant preſcribed to diſtrain for* * *Rent upon the Land held, and to carry the Diſtreſs to D. in another County*, therefore he was condemned; For a Man cannot preſcribe againſt a Statute, and the † Statute is, that a Man ſhall not diſtrain in one County and carry the Diſtreſs into another County. Br. Preſcription, pl. 50 cites 30 Aſſ. 38.

* Orig. is (Term) but it ſeems it ſhould be (Ferm)——

† Stat. Marlbridge, cap 4. and Weſt. cap. 16.

6. Attachment upon a Prohibition againſt the Defendant, who cauſed him [to be] cited for Tithes de Silva Cædua, and the *Defendant preſcribed to have Tithes de Silva Cædua*, and by the Reporter he cannot preſcribe againſt a Statute made after Time of Memory, and that Preſcription cannot make it to be impleaded in the Spiritual Court, by which the Defendant imparled &c. Br. Preſcription pl. 2. cites 9 H. 6. 56.

(K) What ſhall be a good Preſcription. Againſt *Reaſon or Common Right.*

1. **It is not a good Preſcription** to have a Heriot of every Stranger dying within his Manor **41 El. B. between** *Perkins and Cumberford*, **adjudged. cited M. 3 Ja. B. R.**

2. **If a Sheriff preſcribe** to have a certain Gift at every Tourn **&c. This is againſt Common Right, For a Gift is at the Will of the Donor. 42. E. 3. 5. adjudged.**

3. **If there be a** Lord of a Vill, and another has a Leet, but no Land beſide the Leet, and he claims by Cauſe of the Leet to be Lord of the * Waſts of the ſaid Vill by Preſcription. **This is a void Preſcription.** 9 H. 6. 44. b. **Curia.**

* Fol. 267.

4. **A Man may preſcribe** to have a Fair in the Franktenement of another **Man.** 11 H. 6. 23.

S. P. And to aſſign Booths there. Br. Preſcription, pl 97. cites 11 H. 6. 25.

5. A Man may preſcribe, *That if his Beaſts eſcape into the Land of B. that B. cannot diſtrain them, nor have Action*, and a good Preſcription; by all the Juſtices. Quære of the Reaſon. Br. Preſcription, pl. 71. cites 8 E. 4. 5.

6. In Treſpaſs; by the Court, where a Man *preſcribes that in ſuch a Vill has been a Market ſuch a Day* Time out of Mind, and juſtified for buying

Br. Prescription pl. 73. cites S. C.

buying the Goods there, this is a good Prescription, and a good Custom, tho' he does *not shew to whom the Market belongs*; For per Littleton it *goes with the Land*. Br. Customes, pl. 48. cites 12. E. 4. 8.

7. If a Man prescribes, that if he *finds Goods within his Manor, that he shall have them*, this is a void Prescription; For it is contrary to Reason, and a Thing which cannot have Lawful Commencement. Br. Prescription, pl. 93. cites Doct. & Stud. lib. 2. cap. 51.

Br Prescription pl. 57; cites 5. H. 7. S P.

8. It is no good Prescription *to distrain for Damage feasant, and to retain* the Distress *till he has Fine at his Will*; For it is contrary to Common Right and Reason, and a Man shall not be his own Judge. Br. Prescription, pl. 101. cites Littleton tit. Villeinage.

So the Custom in London to *Shoot* in the Land

9. Prescription to *cut Grass* in another's Land *to strew the Church* is good. Per Cur. Mar. 17. Pasch. 15 Car. in Bond's Case. of another, is good. Per Cur. Mar. 17. in Bond's Case —— *So* for the Inhabitants of a Town to have *a Way* over the Land of another to their Church. Ibid.

10. In case the Plaintiff declared, that he was seised of an ancient Messuage &c. in T. and that he and all his Ancestors, whose Heir he is, Owners of the said &c. had used Time out of Mind *to set up Hurdles in Aperta Platea* of T. *near the said Messuage every Market Day, to make Penns for Sheep*, for which he &c. have used for such Penning to receive Money, and further, that the Defendant Brooke cut down his Hurdles, Per quod Proficium suum inde amisit; It was objected upon a Demurrer, That this Prescription was too general, it being to set up Hurdles in Aperta Platea, *not shewing whether on his own Lands, or on the Lands of another*; For though Fishermen may prescribe to set Stakes on other Men's Lands adjoining to the Sea to dry their Nets, that is for the Commonwealth; but this is only *for a private Gain*, which cannot be on the Lands of another; but it was answered that the Prescription was good; for a Market is as well for the Benefit of the Publick as Fishing; And afterwards Judgment was given for the Plaintiff, 1 Le. 108. pl. 147. Pasch. 30 Eliz. B. R. Ferrers's Case.

In arguing for the Reasonableness of this Prescription were cited 8 E. 3. 37. b. where the Defendant justified in Trespass for pulling down of a

11. The Plaintiff prescribed for *Toll of Goods bought within his Manor*, viz. 2d. For every Pack of Mancheſter Wares bought in Mancheſter, except of the Burgesses there; And the Question upon the Pleadings was, Whether a Toll *Independant of all Markets and Fairs* can be good, *without shewing that the Subject hath some Benefit*. The Court was not satisfied with this Prescription, because there was no Recompence for it; And every Prescription to charge the Subject with a Duty, must import some Benefit or Recompence to him who pays it, or else some Reason must be shewed why the Duty is claimed. 4 Mod. 319. 323. Mich. 6. W. & M. B. R. Warrington v. Moseley.

Fold as Servants to the Lady of the Manor of Hastings, who by reason of her Seigniory had a *Frankfold throughout the said Vill, so that no other could fold there without her Leave*; And it was held that tho' this extended as well to Strangers as to those of that Vill, it was good. And [D. 352. b. Trin. 18. Eliz. Anon. for a Custom called Granage] where the Lord Mayor of London brought an Action on the Case, grounded on a Custom to have the 20*th Part of that Salt of every Stranger who brought it to the Port of London*; And though no Reason was alledged why he should have that Part, yet it was adjudged for the Mayor. But per Cur. The Case in Dyer seems to be very Hard to have the 20th Part, without giving any Reason why. But as for the Foldage, it was upon the Lands of the Manor of Hastings, whereof the Tenants had the Feedings, and that may have a Reasonable Commencement. 4 Mod 322. 323. ——— [The Case of the Foldage was adjourned over, and was that of Jefferey at Hay v Ford & Gray. Vide the Year Book.]

(L) Against the Law of the *Land and Common Right*.

1. THE Tenants of a Manor **may prescribe** to have the sole Common **for their Horses** in a Meadow after the Grass cut, and made

made into Graſs Cocks,*to tye and keep their Horſes there, ſo that they do not meddle with the Hay, till Lammas Day and after Lammas Day for all †Commonable Beaſts Levant and Couchant upon their Tenements at large, without ‡ tying or keeping till Lady Day in Lent annually, as to their Tenements appertaining, excluding the Lord of the Meadow and Manor from having any Common or Paſture there for this Time, he having the Soil of the Meadow throughout the Year, and the whole Herbage till Lammas, or ‖ till the Cutting, if he keeps it for Hay. Paſc. 12. Car. B. R. between *Wheatland* and *Sir Thomas Paine*, by Bramſton Chief Juſtice, he only being in Court upon Evidence at a Trial at Barr, in an Action upon the Caſe for eating of the Common of a Commoner; But he agreed that the Defendant ſhould have thereof a Special Verdict if he would, but after he would not have a Special Verdict for the Cleerneſs of it, and upon this a General Verdict was given for the Plaintiff; For here the Lord is only excluded for a Time; And it is a Common, in as much as divers ſeveral Perſons have Paſture there in reſpect of their ſeveral Tenements.

*Orig. is (lier)
† Orig. is (convenable)
‡ Orig is (tier)
‖ Orig. is (Share)

2. But P. 10. Ja. B. & Tr. 10 Ja. B. between *Kenrick and Pargeter* per Curiam it is not a good Preſcription, that the Lord from Lammas to Candlemas ought not to put in more than 3 Horſes during this Time, Becauſe the Lord cannot be ſtinted.

The Lord may be ſtinted. Yelv. 129 S. C. — Brownl. 187. S C. —— Noy. 130. S. C. adjudged. — 2 Brownl. 60. S. C. The Pleadings —— Cro. J. 208 S. C. [But that is only upon the Point of the Commoners diſtraining the Cattle of the Lord Damage feaſant]

3. If a Man preſcribes to have Common of Paſture or Eſtovers in the Soil of another Man, and that the Owner of the Soil ſhall be excluded from having Common there, this is a Preſcription or Cuſtom againſt the Law, to exclude the Owner of the Soil; for it is againſt the Nature of this Word Common; for it was implied upon the firſt Grant of the Common there, that the Owner of the Soil ſhould intercommon with him. Co. Litt. 122. and there cites P. 26 El. B. R. between *White and Shirland* adjudged.

See the Notes upon pl. 6, 7.

4. A Man may preſcribe to have Separalem Piſchariam in ſuch Water, and thereby to exclude the Lord of the Soil. Co. Lit. 122.

5. But a Man cannot preſcribe to have Common of Piſchary or Liberæ Piſcariæ in ſuch Water, and to exclude the Owner of the Soil; for it is againſt the Nature of a Common of Libera Piſcaria. Co. Lit. 122. And there ſaid that it was ſo reſolved in Bank between *Chimney and Fiſhen*. And M. 29. 30. El. between *White and Shirland*, and between *Friſton and Cratchrode* the ſame Term.

6. A Man may preſcribe to have Solam Veſturam of certain Lands from ſuch a Day to ſuch a Day, and by this to exclude the Owner of the Soil from Paſturing or Feeding there; for by ſuch Grant this is not any Common, nor implies any Intercommoning by the Owner of the Soil, but that the Grantee ſhall have the ſole Paſture. Co. Lit. 122.

In Replevin &c. for taking his Cattle in 5 Acres of Land, the Defendant avowed as Bailiff of Sir G. S. and laid a Preſcription in him *to have Herbage and Paſturage in* the ſaid *five Acres*, *when* it was *not ſown*. Plaintiff demurr'd; it was objected, That this Preſcription was not good, it being not like a Preſcription to have Common, which is only a Taking the Profits by the Mouths of Cattle, but this is all one as to preſcribe to have the Land itſelf; for by the Demiſe of the Herbage the Land itſelf paſſeth. But adjudged that the Preſcription was good, becauſe it *might have a good Beginning by Grant*, and conſequently if it might be good by Grant, it may be good by Preſcription. Winch. 6. Paſch. 19 Jac. Sir George Sparkes's Caſe —— Hutt. 45. S. C By the Name of Pitt v. Chick.

7. So a Man may preſcribe to have Separalem Paſturam of ſuch Land, and to exclude the Owner of the Soil. Co. Lit. 122.

In Treſpaſs by the Lord of the Manor, the Defendant as Tenant preſcribed to have *Solam Paſturam of a Cloſe Omni tempore Anni* The Court was divided in Opinion, whether this Preſcription to have Sole Paſture of a Cloſe of the Lord's Omni tempore Anni be good. Wild and Archer J. held it good, but Vaughan Ch. J. and Tyrrel contra. It was intended to have been adjourned into the Exchequer Chamber, but was not. Afterwards it was brought into B. R. and the Preſcription adjudged good. Lev.

253 Mich. 20 Car. 2. C. B. Sir Hen. North v. Cox ——— S. C. Vaugh. 251 to 258. the Court was divided. —Vent. 383 to 398. S.P. (inter alia) argued by Sir Francis North, in the Caſe of **Potter v. North**, in the Court of Exchequer; and the Report ſays, pag. 398. That afterwards another Action was brought to Trial in the Exchequer, and after a full Evidence of about 4 or 5 Hours, the Plaintiff not daring to ſtand to the Verdict, was nonſuited.——S. C. Lev. 268. 269. where it was argued that Preſcription to have Solam Paſturam, and exclude the Lord, is not good; and to that Purpoſe were cited Fitzh. Preſcription 51. Hutt. 45. Co. Litt. 122. Yelv. 129. Cro. J. 256. whence it was inferr'd that the Tenants might preſcribe *to have Part of the Profits throughout the whole Year, or all the Profits for Part of the Year*; but that this here is to exclude the Lord of all the Profits, and is like a Cuſtom *to have all the Common, and exclude the Lord.* But it was anſwered and reſolved, That this is not to exclude the Lord of all the Profits; for *he ſhall have the Mines and the Trees, and is not like to a Preſcription to have all the Common, and exclude the Lord, which would be repugnant*; for in all Caſes of Common the Lord is to intercommon with the Tenants in the Nature of Common; and conſequently to exclude the Lord would be repugnant to the Eſſence of Common; and Judgment was given for the Defendant. Trin. 21 Car. B R.——— Saund. 347 to 353. The Pleadings and Arguments of the Counſel And ſays the Court ſeemed to incline that the Preſcription was good; but that upon a Trial at Bar the Tenants could not prove their Title as alleg'd; whereupon the Lord had a Verdict. ———In arguing this Caſe, the Counſel for the Plaintiff cited a Caſe in Trin. 1654 Rot. 549. in B. R. where one claimed a *Fold-Courſe, and excluded the Owner of the Soil by Preſcription*, and adjudged good.——And that a Preſcription by the Copyholders to have *Solam Paſturam*, excluſive of the Lord, was adjudged good; but that notwithſtanding ſuch Preſcription, the Soil is the Lord's, and he hath Mines, Trees, Buſhes, Coals, Stones &c and he may dig for Turfs. 2 Lev. 2. Paſch. 23 Car. 2. B. R. **Hopkins v. Robinſon**, and Mod. 74. Mich. 22 Car 2. B. R. by the Name of Hoskins v. Robins——2 Saund. 324. S. C. adjudg'd.—Pollexf. Rep. 13 to 23. S. C. argued by Pollexfen, and adjudged.——S. C cited by the Reporter as adjudged. Vent. 398. at the End of the Caſe of Potter v. North.

A miſtake.

* Orig. is (Doſtells.)

8. Attachment upon a Prohibition, the *Defendant preſcribed that the Clerks of Oxford have Privilege to have the principal * Houſes, which were wont to be let to Clerks before any other*, and eſpecially where Clerks were abiding before; and after Iſſue was taken, if Clerks were abiding there at the Commencement of the Suit, or not; and therefore in a Manner confeſs'd that this is a good Preſcription. Quære; for *they are not Incorporate, nor People which have had Continuance.* And per Finch, The Merchants of the Staple have the like Cuſtom, and thoſe of the King's Marſhalſea and the King's Juſtices; quære if the Inns of Court are not in the like Plight. Br. Preſcription, pl. 8. cites 40 E. 3. 16.

Brownl. 219. S.C. Yelv. 187 adjudg'd. S. C. by the Name of Dewclas &c. v. Kendal &c.

9. Treſpaſs &c. for Taking and Carrying away 30 Loads of Thorns, by him cut down and lying on his Land at C. in a Place called the Common Waſte. Defendant juſtified, That he was ſeiſed in Fee of a Meſſuage and three Acres of Land &c. and ſo preſcribes *to cut down and take All the Thorns* growing in the ſaid Place, *to ſpend in the ſaid Houſe, or about the ſaid Lands as appurtenant thereunto.* The Plaintiff replied, That R. S. was ſeiſed in Fee of the Manor of C. whereof the ſaid Eſtate was Parcel, and gave him Leave to take the Thorns. Adjudged that *this Preſcription* by the Defendant *excludes the Lord*; ſo that he can neither cut or licenſe any other to cut Thorns. Cro. J. 256. Mich. 8 Ja. B. R. Duglaſſe v. Kendal.

Fol. 268.

(M.) What ſhall be a *good* Preſcription. *In Reſpect of the Time.*

1. IN an Action brought by the Prior of Coventry againſt ſome of the Men of Earle-ſtreet in the Vill of Coventry, for the ſelling of Merchandizes in their Houſes and Shops, in the Days of the Market held in Priorychhale [or Market-houſe] in the ſame Vill. The Defendants ſay, Quod Ranulphus quondam Comes Ceſtriæ Dominus de Earle-ſtreet conceſſit Hominibus ſuis de Earl-ſtreet to have the ſame Liberties as Lincoln had, and ſhews the Charter teſtifying the ſame, and alſo ſhews the Charter of Confirmation thereof made by H. 2. And ſay that Idem Comes habuit Mercatum ibidem &c. & Hæredes

Hæredes ſui, until one of the Heirs leaſed it to Farm to the Prior of Coventry, unde ipſi Defendentes dicunt, quod ipſi & Anteceſſores ſui ac eorum Feoffatores & eorum Anteceſſores tenebantur tenere, quæ ipſi nunc tenent in Earle-ſtreet, a tempore quo non extat Memoria ac etiam a tempore prædicti Comitis & anteceſſorum ſuorum ſemper hucuſque in Domibus & Seldis ſuis in ipſo loco conſtructis Omnimoda Mercimonia vendiderunt &c. But the Defendants were demanded by the Juſtices, Si ipſi porrexerint prædictas Chartas pro Titulo aut pro Evidentia facti ſui prædicti & ſi ſe tenere velint ad Chartas illas pro Titulo an ad Conſuetudinem prædictam. Qui dicunt quod protulerunt Chartas illas ad Evidentiam; and upon this Iſſue was taken upon the Preſcription. 2 E. 2.

2. In Writ of Annuity by a Prior, if he counts upon a Preſcription, it is good for the Defendant to ſay that the Priory was founded ſince the Time of King Richard. 24 H. 6. 37.

3. In an Annuity by Preſcription the Defendant pleaded, that it was granted upon a Compoſition, and ſo he ought to count upon the Compoſition. But there it is ſaid by Newton, that if he ſhall count upon this Compoſition, then it ſhall come in Iſſue whether it was made before Time of Memory, [and] then it cannot be tried; but if the Title had commenced with the Poſſeſſion ſince Time of Memory, this may be known by the Jurors; and if they cannot find it, then the Preſcription is good. 19 H. 6. 75.

4. A Man ſhall not have any Advantage by Allegation of a Foundation, or other Matter in Fact to be done before Time of Memory; becauſe this cannot be tried. 1 E. 4. 6. b.

5. So a Man ſhall not have any Advantage by Allegation of a Deed or Specialty made before Time of Memory, becauſe this cannot be tried. 1 E. 4. 6. b. 14 H. 7. 1. of a Deed of a Rent-charge whereof he had not Seiſin within Time of Memory.

6. So a Man ſhall not have any Advantage of a Record before Time of Memory, becauſe it cannot be tried. As he ſhall not have Execution of a Fine. 1 E. 4. 6. b. And yet Bingham there ſaid, that he never ſaw any Record of the King before the Time of H. 3. of this Opinion; for there was held a Diverſity between a Record and Deeds, and Matters in Fact. 19 H. 6. 75. b.

But Bingham ſaid. That now they are *held all one* as to this Intent, viz. That he ſhall not have Advantage either in one Caſe or the other. Ibid.

7. If the King before Time of Memory had made a Grant, this is not of any Effect as a Patent after Time of Memory, unleſs it had been allowed in Eier within Time of Memory. 19 H. 6. 75. b. 9 H. 7. 11. b. Per Curiam, of Conuſance of Pleas. 2 E. 4. 23. accordingly. Co. 9. Ab. Stra. Bar. 27. b. Contra 12 H. 4. 22. b.

8. If a Vill be incorporated by Letters Patents before Time of Memory, and thoſe Franchiſes never [were] uſed ſince Time of Memory, they have loſt their Franchiſes. 14 H. 7. 1.

Br. Franchiſe, pl. 10. S. C Per Vaviſor.

9. Such Things as do not ly in Point of Preſcription, but ought to be created and ſupported by Charter, and the Charters thereof were made before Time of Memory, they are not pleadable nor of any Avail, if they have not been allowed within Time of Memory. Co. 9. Ab. Stra. Barc. 27. b. 1 H. 7. 23. b.

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10. It is clear enough, that there was a certain Time which was called the Time of Memory in Preſcription. 19 H. 6. 75. Per Newton. 1 E. 4. 6. b. 9 H. 7. 11. 14 H. 7. 1.

In *Annuity* the Parties were at Iſſue upon Preſcription of the Annuity, and the *Plaintiff gave in Evidence a Deed bearing Date after the Time*

11. The ſaid Time of Memory in a Preſcription was from the Time of King R. 1. 20 H. 6. 3. D. 3 Bar. 119. 5. 13 H. 4. 9. b. The Time of King John [is] within Memory. Lit. S. 170. 34 H. 6. 36. b. 37.

12. The ſaid Time of Memory was from the Commencement of the Reign of King R. 1. for all the Time of King Richard 1. was within

of King R. 1. and the Defendant would have demurr'd in Law upon it, and the Plaintiff would not, but said, that he used it for Confirmation, and not as an Original Grant; and admitted there, that where the Prescription is in Issue, it *suffices for the Jury to inquire of the Time of their own Memory, where no special Evidence is to the contrary.* Br. Prescription. pl 6 cites * 36 H. 6. 36. — *But where special Evidence is to the contrary*, as above, there they *ought to inquire of the Time of King R.* 1. Ibid. —— *And* Per Prisot there it is a good *Plea, that the Church* † *of which the Prior prescribes was founded after the Time of King R.* 1. *or after Time of Memory.* Ibid. — *So*, that it was founded *in the Time of King John.* Ibid.— *But* Brook says, It seems that in those Cases he *ought to traverse the Prescription*; for *otherwise it is only Argument.* Ibid —— *So* it seems *at this Day by the Statute of Limitations* 32 *H.* 8 to say, *that* the Church *was founded within the* 60 *Years*, or the like Ibid —— [* It should be 34 H. 6. 36.] —— † Br. is (De que le por pl. fait.) but the Year-Book is as translated.

within the Time of Memory. 20 H. 6. 3. Per Newton. 13 H. 4. 9. b. Where the Seisin of King R. 1. was allowed for good Title, and so a Warrant in his Time.

13. It seems that by the Words (a tempore cujus Contrarii Memoria Hominum non existit) properly and generally is intended, and all Times before this and before the Statute of Limitation was intended; whereof no Proof could be made to the contrary, either by Testimony or Evidence, in any Time before, without any Limitation of Time. 34 H. 6. 36. b. 37. it seems will prove it.

14. But when by the Statute of Limitations the Seisin in a Writ of Right was limited to the Time of R. 1. so that none could count of a more ancient Seisin; and this Writ being the most High Writ was taken within the Equity of the Statute; also, that tho' a Man might prove to the contrary of a Thing whereof the Prescription was made, yet this should not destroy the Prescription if the Proof was of a Thing before the said Time of Limitation; for it was Reason that the Inquiry in a Prescription should be limited as well as in a Writ of Right, being more base than that; for it would be hard to put Juries to inquire of Things so ancient. And therefore it is said in 13 H. 4. 9. b. that the Limitation in Writ of Right is too long Time for a Prescription; and yet this Limitation is not changed, nor can be without Statute.

15. Rot. Parl. 43 E. 3. N. 16. Pray the Commons, because all the Time of R. 1. is held for Time of Memory, from which Time no Man may have true Cognizance, that it please to limit in certain the Time of Memory, so that it doth not pass the Coronation of King Edward Grandfather of our Lord the King, who now is; and like Petition was for diverse Opinions and Mischiefs which happen'd 46 E. 3. N. 28. but no Assent to them. But the Answer to the first Petition is, Let the Law stand as it has done heretofore till it be otherwise ordained.

16. It seems that as the Time of Memory in a Prescription was limited to the Time of R. 1. * a Seisin in a Writ of Right within the Equity of the Statute of W. 1. so that by the same Reason, the Time of Memory at this Day shall be limited to 60 Years, as a Writ of Right within the Equity of the Statute of 32 H. 8. cap. 2. for this is within the same Mischief mentioned in the Preamble of the Statute. But I well know, that the Practice is e contra.

* Orig. is (Selonque ceo.)

Noy 3 S. C. adjudg'd —— Adjudg'd in a Prohibition in B. R. that a Parson cannot prescribe against the Composition

17. A Vicar endow'd De Minutis Decimis Anno Domini 1310. sues the Parson appropriate for them; the Parson cannot prescribe against this Endowment, tho' it was 300 Years past; for the Prescription ought to commence since the Endowment, which was since the Time of Limitation, Scil. R. 1. P. 3. Ja. B. R. between *Pringe* and *Child.* Adjudg'd.

of the Vicar for Things allow'd the Vicar by the Composition. And it was likewise decreed in Chancery, that the Prescription was not lawful against the Composition; and an Injunction was awarded for the Vicar to stay the Suit of the Parson limited to the Vicar upon the Composition. Mo. 761. pl. 1055. & 780. pl. 1081. S. C. — S. C. cited Watf. Comp. Inc. 8vo. 730, 731. cap. 39.

18. Common Law admits of no Prescriptions but what are *Time out of Mind* &c. tho' the Spiritual Court allows of Prescriptions sometimes of

20,

20, and ſometimes of 40 Years. Per Hale. Vent. 274. Mich. 27 Car. 2. B. R. Anon.— And ſo of 10 Years. 3 Bulſt. 242. Per Doderidge. Mich. 14 Jac. in the Caſe of Harding v. Goſeling.

* (Q) *How* it may be *made*. [Affirmatively or Negatively.]

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See Prohibition (H) pl. 3. * N.B. There is no Letters of (N) (O) (P) in Roll. —— † It ought to be in the Affirmative and not in the Negative. Br. Preſcription. pl. 71. cites 8 E. 4. 5.

1. † **A Preſcription in** in the Affirmative **is good.** 11 E. 4. 2. 18 E. 4. 3. b.

2. **A Preſcription** in the Negative merely **is not good.** 11 E. 4. 2. b. 18 E. 4. 3. b. 8 H. 6. 4. Br. Preſcription. pl. 17. cites 7 H. 6. 32. and 8 H. 6. 3.

3. **A Preſcription** in the Affirmative mix'd with the Negative, where the Affirmative is of Effect **and material, is good.** 11 E. 4. 2. b. Br. Preſcription. pl. 17. cites 7 H. 6. 32. and 8 H. 6. 3. —— As to be impleaded by Writ and not by Bill, or to pay but a Penny for Toll and no more. Br. Preſcription. pl 72. cites 11 E. 4. 2. Per Littleton, Catesby, and Brian.

4. **It is a good Preſcription,** that he and his Anceſtors, and all thoſe whoſe Eſtate he has **in ſuch a Manor** have uſed Time &c. to buy in ſuch a Market or Fair &c. and not to pay any Toll; **for this is Negative mix'd with the Affirmative, which Affirmative proves it to be put in Ure.** 8 H. 6. 4.

5. **It is not a good Preſcription,** that he has not paid Toll Time &c. **for this is merely in the Negative.** 8 H. 6. 4. Br. Preſcription. pl. 17. cites S. C. —— S. P. But it ſhall be in the Affirmative as to ſay, *that he and his Anceſtors have been quit of* Toll Time out of Mind. Br. Preſcription. pl. 76. cites 18 E. 4. 3.

6. In Aſſiſe *the Defendant pleaded Hors de ſon Fee* (for it was *of Rent*) and the *Plaintiff ſaid, that he and his Anceſtor, and thoſe whoſe Eſtate* &c. *have been ſeiſed of the Rent Time out of Mind*, and held *no Plea without Deed of the Conveyance of the Que Eſtate*. Br. Preſcription. pl. 51. cites 31 Aſſ. 23. By which he *ſaid, that he is Lord of the Manor of A. and he and his Anceſtors, and thoſe whoſe Eſtate* &c. were ſeiſed of the ſame Rent as Parcel of the ſame Manor Time out of Mind. Ibid

7. The Plaintiff preſcrib'd, that he and his Predeceſſors have had a *Mill in D. and no others had a Mill there.* Per Priſot; This Preſcription is *in the Negative*, and therefore not good. But Per Paſton, Preſcription *in the Affirmative, and alſo in the Negative* is good. To which no Anſwer was given. Br. Preſcription. pl. 24. cites 22 H. 6. 14. Br. Action ſur le Caſe. pl. 57. cites S. C.

8. *Treſpaſs* upon the Caſe *for ſtopping of a Sewer*, by which 12 Acres of Land of the Plaintiff are ſurrounded in A. The *Defendant preſcrib'd, that N.W. his Leſſor, and all thoſe whoſe Eſtate he has in a Mill in A. have uſed to ſtop when the Mill wanted Water, and to repair a Bay and Gutter, and N. W. leaſed to him for Years yet continuing* &c. by which he ſtopped and repaired the Sewer &c. and *the other ſaid, that De ſon Tort Demeſne, and travers'd the Preſcription to ſtop.* Br. Preſcription. pl. 44. cites 39 H. 6. 32. Brooke ſays, *and ſo ſee*, that the *Leſſee for Years preſcribes in his Leſſor, and thoſe whoſe Eſtate he has in the Mill*, and *juſtifies in himſelf*, and does *not* preſcribe *that the Owners and their Leſſees may cleanſe the Gutter*, and yet no Challenge taken to it. Ibid.

9. *In the Cinque Ports* they preſcribe, that *Writ of the King does not run there*, and well, and yet it is *in the Negative*; the Reaſon ſeems to be, becauſe it is a Negative with an Affirmative. Br. Preſcription. pl. 65. cites 2 E. 4. 18.

10. In Treſpaſs the Defendant *juſtify'd for Damage feaſant*; the *Plaintiff ſaid, that he had certain Land in D. and that D. and S. adjoin, and that all the Inhabitants of the Vills aforeſaid have uſed to intercommon becauſe of Vicinage Time out of Mind.* Per Choke, You ought to *allege* the Preſcription *in the Tenant of the Franktenement*; for *Tenant for Term of Years, nor at Will*, cannot preſcribe or allege Corporation by Name of *Inhabitants*; But Per Danby and Littleton, if the Uſage be as above, this is good Pleading; Brook ſays, *Quære*, for the Law ſeems to be with Choke. Br. Preſcription. pl. 69. cites 7 E. 4. 26.

11. Preſcription by a *Que Eſtate* is not reſtrained by the *Statute of Limitation*. 32 *H.* 8. 2. Br. Lect. Stat. Limit. 35, 40.

12. Where a *Charge* is on the Defendant *of Common Right*, which by Law he is Subject to, the Plaintiff need not preſcribe in his Declaration. 1 Salk. 22. Mich. 3 Ann. B. R. Tenant v. Golding.

(R) *Liberties.* What Liberties a Man may have *by Preſcription.*

1. SUCH Franchiſes **and Liberties,** which cannot be ſeiſed as forfeited before the Cauſe of Forfeiture appears of Record, **cannot be claim'd by Preſcription; becauſe Preſcription being but an uſage en Pais, cannot extend to ſuch Things which cannot be ſeiſed or had without Matter of Record. Co. Litt. 114. Co. 5.** *Foxley* 109. b.

Br. Preſcription. pl. 60 cites 9 H. 7. 20.— pl. 64. cites 5 H. 4. 118—9 Rep 27. b. Abb. Stra. Marcella.—2. As **a Man cannot have Goods and** Chattels of Traitors, * Felons, Felons of themſelves, or Fugitives. **Co. Litt. 114. Co. 5.** *Foxley* 109. b. **Co, 9. Abb. Stra. Mar. 24. b.**

* S. P. *without ſhewing Charter before Time of Memory, and Allowance in Eyre after Time of Memory.* Br. Preſcription. pl. 56. cites 1 H. 7. 23. —— Br. Corone. pl. 128. cites S. C.—— But Per Knivet Ch. J. a Man cannot preſcribe *in Bona Felonum & Fugitivorum*; for this belongs to the King's Crown, and *cannot paſs but by Grant.* Br Preſcripaion. pl. 10. cites 46 E. 3. 16. —— S. P. Br. Eſtray. pl. 2. cites 44 E. 3. 19. —— S. P. And this ſeems to be of the proper Goods of the Felon, but a Man may preſcribe in *Goods ſtolen and waived*; for a Felon has no Property. Br. Eſtray. pl. 13. cites 46 E. 3. 16 —— Tho' a Man can't preſcribe in the ſaid Franchiſe to have *Bona & Catalla Proditorum*, Felonum &c. yet *may* they or the like *be had Obliquely*, or by a Mean by Preſcription; for *a County Palatine* may be claimed by Preſcription, and by reaſon thereof to have Bona & Catalla Proditorum, Felonum &c. Co. Litt. 114. b.

S. P. Br. Corone. pl. 128. cites 1 H. 7. 22, 23, 25. — Goods of Outlaws cannot be forfeited by Preſcription, becauſe they are not forfeited 'till the Outlawry appears of Record. Co. Litt. 288. b.

3. So **a Man cannot have Goods and Chattels** of thoſe who are put in Exigent **by Preſcription. Co. Litt. 114.**

4. So **a Man cannot have** Deodands **by Preſcription. Co. Litt. 114.**

S. P. *without ſhewing Charter before Time of Memory, and Allowance in Eyre after Time of Memory.* Br. Preſcription. pl. 56. cites 1 H. 7. 23. —— Br. Corone. pl. 128. cites S. C. —— S. P. But a Man may preſcribe *Tenere Placita.* Br. Preſcription. pl. 59. cites 9 H. 7. 11. —— S. P. by Holt Ch. J. For the having Conuſance of Pleas excludes other Juriſdictions. Comb. 282. Trin. 6 W. & M. B. R. in the Caſe of Millard v. Cole. —— But as to Conuſance of Pleas the King himſelf cannot have it but by Matter of Record, and therefore a common Perſon cannot be in a better Condition. Br. Preſcription. pl. 64. cites 5 H. 4. 118. [It ſhould be 5 E. 4. 118.]

5. So **a Man cannot have** Conuſance of Pleas **by Preſcription. Co. Litt. 114.**

6. So

6. So **a Man cannot prefcribe** to make a Corporation. **Co. Litt.** 114. b. The Citizens of London prefcrib'd in Uſage, *that Guild or Fraternity may make another Guild and Fraternity*; and the Cuſtom was condemn'd by Award, for *none may do it but the King, or he who has the King's Charter to do it by expreſs Words.* Br. Cuſtoms. pl. 40. cites 49 Aſſ. 8. —— Br. Preſcription. pl. 55. cites S. C.

7. So **a Man cannot have a** Sanctuary **by Preſcription. Co. Litt.** 114. b. S. P. *without ſhewing Charter of the King before Time of Memory, and Allowance in Eyre after Time of Memory.* Br. Preſcription. pl. 56. cites 1 H. 7. 23. —— Br. Corone. pl. 128. cites S. C. —— Br. Sanctuary. pl. 15. cites S. C. —— S. P. Br. Sanctuary. pl. 8. cites 1 H. 7. 6. —— S. P. Hawk. Pl. C. 336. S. 3. —— S. P. But if he has *ancient Charter and Uſage*, he may preſcribe. Br. Preſcription. pl. 65. cites 2 E. 4. 18. Per Choke. But Br. cites fol. 23. where the Opinion was, That it was not good, tho' a Grant of the King, before Memory was ſhewn and Uſage after; becauſe it is againſt Common Right, and cannot have a lawful Beginning.

8. So **he cannot preſcribe** to make a Coroner. **Co. Litt.** 114. b. Serjeant Hawkins ſays, It is clearly ſuppoſed by the Statute of 28 E. 3. 6. that not only the King but alſo other Lords have the Franchiſe of making Coroners; From whence it ſeems reaſonable to infer, That the King may lawfully claim ſuch Franchiſe by Preſcription, and that other Lords may claim it by Grant from the Crown; but it is a Privilege of ſo high a Nature, that no Subject can well intitle himſelf to it by Preſcription only. 2 Hawk. Pl. C. 44. cap. 9. S 11.

9. So **a Man cannot preſcribe** to make Conſervators of the Peace. **Co. Litt.** 114. b. Serjeant Hawkins ſays, It is queſtion'd by ſome, Whether ſuch Power can be claimed by Uſage? Yet if the Power of holding Pleas, and even Courts of Record, which are of ſo high a Nature, and imply a Power of keeping the Peace within their own Precincts, may be claim'd by Uſage, as it ſeems to be certain that they may; it ſeems ſtrange, that the bare Authority of keeping the Peace in a certain Diſtrict may not as well be claimed by ſuch Uſage. 2 Hawk. Pl. C. 34. cap. 8. S. 10.

10. In Treſpaſs, the *Mayor of L. juſtified becauſe it had been uſed* Time out of Mind, *that the Mayors have been Conſervators of the Peace, and* have uſed, *for Affrays done in their Preſence, to commit the Offenders to Priſon till they have found Surety of the Peace.* Brian ſaid, You have no ſuch Power, but to commit him to Ward till he has made Fine; and by him and Pigot, The Power of the Mayor *cannot reſt upon the Uſage.* Br. Preſcription, pl. 79. cites 21 E. 4. 67.

11. A Man can't preſcribe *to levy Fines in his Court* of Lands within his Manor, becauſe Fine is a Record which no Man ſhall have by Preſcription, and the *King upon every Concord is Donor*, which a Man can't be by Preſcription. Denth. R. of Fines 3.

12. It was held by Hale Ch. B. that *Return of Writs* may be claimed by Preſcription, as *appertaining to a Manor.* And ſo it appears in * Quo Warranto 2. in 42 Eliz. where the Law is admitted to be ſo, tho' the Preſcription there was not well laid to intitle the Party to it; *but more eſpecially* may it be claimed as appertaining *to an Honour*, as it was held in 19 Jac. in **Howard's** Caſe, in the Caſe of the **Honour of Clun**; for Honours have more large Incidents than Manors have. Hard. 423. Trin. 17 Car. 2. in Scacc. Counteſs of Pembroke v. The Earl of Burlington. But Doderidge Arguendo ſaid, that Retorna Brevium could not be gained by Preſcription out of the Crown. Mo. 670. pl. 918. Mich. 43 & 44 Eliz. B. R. in Cornwall's Caſe --* S. C. Cited per Hale Ch. B. Vent. 405. as the Earl of Shrewsburp's Caſe; and ſays you will find the Pleadings in the New Entries Quo Warranto, pl. 2. Mich 41 & 42 Eliz. B. R.

(S.) What *Things* a Man may have by Preſcription.

1. A **Man may have** Treaſure Trove **by Preſcription. Co.** [114. b.]

2. So

S. P. Br. Eſtray, pl. 2. cites 44 E. 3. 19.

2 So he may have Waifs and Eſtrays by Preſcription. Co. Litt. 114. b. Co. 5. Forley 109. b.

——S. P. Br. Preſcription, pl. 56. cites 1 H. 7. 23.—Br. Corone, pl. 128. cites S. C.——Br. Preſcription, pl. 10. cites 46 E. 3. 16.—pl. 60. cites 9 H. 7. 20.——And a Man may preſcribe in Waif *and Leet, without ſhewing of Allowance* within Time of Memory, becauſe it ſtands with Common Right. Br. Ibid. pl. 65. cites 2 E. 4. 23.

Br. Preſcription, pl. 14. cites 11 H. 4.

3. So he may have Wreck of the Sea by Preſcription. Co. Litt. 114. b.

15 S. P.--pl. 60. cites 9 H. 7. 20. S. P.—S. P. Br Ibid. pl. 56. cites 1 H. 7. 23.--Ibid.—Br Corone, pl. 128. cites S. C.—S. P. Per Thirn; but per Hank, he ought to have Charter thereof, or Allowance in Eyre. Quære of Allowance; for per Thirn, Several Franchiſes are enjoyed in England without Allowance in Eyre. Br. Preſcription, pl. 83. cites 11 H. 4. 16.

See (R.) pl. 5.

4. So he may hold Pleas by Preſcription. Co. Lit. 114. b.

And a Man may preſcribe *to diſturb a Leet.*

5. So he may have a Court Leet or Hundred by Preſcription. Co. Litt. 114. b.

See Br. Action ſur Caſe, pl. 75. cites 38 H. 6. 16.

Fol. 271.

6. So he may have Infangthief and Outfangthief by Preſcription. Co. Litt. 114. b.

Br. Preſcription, pl 10. cites 46 E. 3. 16.

*A Man may preſcribe that he and

7. So he may have a * Park or Warren by Preſcription. Co. Litt. 114. b.

all thoſe whoſe Eſtate he has in the Manor of D. *have had Park in the ſame Manor as appendant* &c. and good. Br. Preſcription, pl. 57. cites Itin. Not. 3 E. 3.———Br. Preſcription, pl. 188. S. P.

S. P. 7 Rep. 18. b. Trin 34 Eliz. in

8. So he may have Royal Fiſh by Preſcription, as Whales, Sturgeon &c. Co. Litt. 114. b.

the Caſe of Swans, cites 39 E. 3. 39.——A Man may allege a *Piſchary to be appendant to Houſe and Land*, and may preſcribe in it alſo. Br. Preſcription, pl. 66. cites 4 E. 4. 29.

9. So he may have Fairs and Markets by Preſcription. Co. Litt. 114. b.

10. So he may have the Cuſtody of a Gaol by Preſcription. Co. Litt. 114. b.

Frankfoldage *cannot be but appendant* to ſome Land, and a Man may preſcribe that he and his Anceſtors Time out of Mind have had Frankfoldage of the Beaſts of his Tenants in C. and his Termor for Years *need not ſhew Deed*, for he does not claim but a *Chattle*. Per Brian and Townſend. Br. Preſcription, pl. 105. cites 1 H. 7. 24.

11. So he may have a Frankfoldage by Preſcription. Co. Litt. 114. b.

In Treſpaſs Defendant juſtified under a Preſcription, that the *Lords of the Manor* of H. have, and always uſed to *have Free-foldage throughout the Vill* of H. and to have the Penning of the Sheep; *ſo that the Vill of H. ought not to have Free-foldage without Conſent of the Lord*; and that if any levied a Fold without ſuch Conſent, the Lord had us'd to abate it. It was urg'd that this Preſcription is void, being againſt Common Right, which gives every one Foldage in his own Land. Sed non allocatur; for every Preſcription is againſt Common Right. 8 Rep. 125. cites 8 E. 3. 37. a. b. Jeffery at Hay's Caſe.---and cites 3 E. 3. 3. a. John de Sedgeford's Caſe. S. P.—S. C. cited 2 Brownl. 287.——2 Bulſt. 195.——The Reporter obſerves upon this Caſe, that tho' Foldage of Sheep is for the Maintenance of Agriculture (which is ſo much favoured in Law) yet by Cuſtom one may be barr'd of it upon his own Land, and he of whom the Land is holden may have it. 8 Rep. 125. b.

S. P And it was objected that this Preſcription was not good, it being againſt Law and Common Right to abridge the Subject of the Profits of his Lands; but adjudged, that the Preſcription was good; for it did not extend to deprive the Subject of the whole Intereſt and Profits of his Lands, which would not have been good, but only reſtrained him to ſet up Hurdles, which is a reaſonable Preſcription, and *reſtrains a Particular Profit only.* Le. 11. pl. 14. Mich. 25 & 26 Eliz. B. R. Punſany v. Leader.

12. In Aſſiſe of *Rent* the Aſſiſe found that the Plaintiff, and thoſe whoſe Eſtate he has in the Rent, were thereof ſeiſed Time out of Mind, and the

the Plaintiff Seis'd and Diſſeis'd, and Recover'd; and ſo note Rent recover'd by Preſcription. Br Preſcription, pl. 46. cites 13 Aſſ. 4.

13. The Defendant preſcribed in *Toll-thorough*; Thorp, Juſtice, ſaid, This is to go through the Highway, which every one may lawfully do, and therefore *it is a void Preſcription*; *but* a Man may preſcribe in *Toll-traverſe*; For this is to paſs over my Land; Note the Diverſity; For none denied it, and Iſſue was taken that it was not a High Street. Br. Preſcription, pl. 88. cites 22 Aſſ. 58.

14. If a Man be impleaded within the Precinct of the Monaſtery of Weſtminſter, of Land in London, he may ſay, that Time out of Mind *Lands in London have been impleaded in London in the Huſtings before the Mayor* &c. Per Laicon; Quod Danby conceſſit. Br. Preſcription, pl. 65. cites 2 E. 4. 18.

So of the Cinque Ports; and per Needham, *the ſame in Cheſter and Wales*. Br. Preſcription, pl. 65. cites 2 E. 4. 18.

15. Treſpaſs *of Sheep taken*, the *Defendant ſaid, That the Land where the Treſpaſs is ſuppoſed is His Franktenement*, where he has *Foldage, and that he and all thoſe whoſe Eſtate he has have uſed that if any depaſture his Sheep with the Sheep of the Defendant in the Day that the Defendant ſhall have them in the Night for their Dung, for their Paſture in the Day*, by which he took and folded them in the Night becauſe they paſtured with his Sheep the Day before, and in the Morning he put them out again; and a good Preſcription, per Fairfax and Tremail; For it *may have lawful Commencement, and the Plaintiff has Quid pro Quo*, ſcilicet, *the Paſture for the Dung*. Br. Preſcription, pl. 57. cites 5 H. 7. 9.

16. In a Leet the Lord may preſcribe *to have of every one, who makes an Affray or Bloodſhed*, 20 *s. and* may preſcribe *to diſtrain for it*, and ſell the Diſtreſs; For this is the Court of the King, and he derives his Intereſt from the King. Br. Preſcription, pl. 40. cites 21 H. 7. 40.

S. B. Br. Preſcription, pl. 106. cites 11 H. 7. 13, 14.

17. There cannot be a Preſcription to have *Omnia Bona & Catalla forisfacta* within &c. Cro. E. 560. Paſch. 39 Eliz. B. R. in Caſe of the Earl of Pembroke v. Berkley.

18. *To have Paſturage for two Horſes in a Meadow of* 1000 *Acres till the Graſs is mowed* was held well enough; For being in ſo great a Quantity of Land cannot defoul or debruiſe the Graſs ſo, but that the Hay may well be made thereof. Cro. J. 27. Paſch. 2 Jac. B. R. Thornell v. Laſſels.

19. A Man cannot preſcribe to have *Fines pro Licentia Concordandi*; becauſe they are Prerogatives of the Crown, and an ancient Flower of it. Arg. Lat. 46, 47. Trin. 2 Car. in Sir Edmond Bacon's Caſe. ——Cites Glanvil 7. cap. 1. & D. 202.

20. For *Matters of Intereſt* it is a Rule, that *nothing may be preſcribed for, that cannot at this Day be raiſed by Grant*; Per Sir Francis North. Arg. Vent. 387. Potter v. North.

21. Preſcription *to have all the Loppings of* all Trees called *Pollards* in ſuch a Place ſeems good. Per Raymond Ch. J. Gibb. 87. Trin. 2 & 3 Geo. 2. B. R. Dickins v. Hampſtead.

(T) *Deſtruction.* What may deſtroy it.

1. IF a Leſſee for Years of a Copyhold Manor leaſes a Copyhold by Indenture for Years, **yet this ſhall not deſtroy the Copyhold againſt him in Reverſion; Becauſe he has not the abſolute Eſtate in the Seigniory. P. 38 El. B. R. between** *Ruſley and Conesby*, **per Curiam upon Evidence at Bar.** Cro. E. 459. (bis) S. C.

Cro. El. 459. (bis) S. C.

2. So if Leſſee for Life of ſuch a Manor grants a Leaſe for Years by Indenture of a Copyhold, This ſhall not deſtroy the Copyhold as to him in Reverſion for the Cauſe aforeſaid. P. 38 El. B. R. between *Ruſley and Conesby*, per Curiam upon Evidence.

3. So of Tenant in Tail of ſuch Manor. P. 38 El. B. R. per Curiam.

4. So if Baron ſeiſed in Right of his Feme of a Copyhold Manor leaſes a Copyhold for Years by Indenture, This ſhall not deſtroy the Copyhold after the Death of the Baron as to the Feme and her Heirs. P. 38 El. B. R. between *Ruſley and Conesby*, per Curiam upon Evidence at Bar.

S. C. Cro. J. 313. It was in Error brought upon a Judgment in a

5. If a Court by Preſcription be granted and confirmed by the King by his Letters Patents, This does not deſtroy the Preſcription; But the Stile of the Court may be by Preſcription as before. M. 10 Ja. B. R. between *Goodſon and Duffield*. Adjudged.

Court of Pye-powders, and the Error aſſigned was in the Stile of the Court, which mentioned it to be held by Cuſtom, and by Charter of the King granted and confirmed &c. which was urged to be repugnant; For that the Charter determines the Preſcription; ſed non allocatur; For they may uſe their Charters either as Confirmations or as Grants, or may claim thoſe Liberties by Preſcription notwithſtanding ſuch Charters. For, as Fleming ſaid, Every Corporation uſes in every King's Time to take a new Confirmation of their Liberties, or otherwiſe they ought to plead upon a Quo Warranto brought for the uſing their Liberties, or in Eyre, Allowance of them, elſe they are not juſtifiable. ——Mo. 830. pl. 1116 S. C. and the Court held, that the Preſcription remains, unleſs it be *altered by the Charter*.——S. C. 2 Bulſt. 21. and there 24. per Williams J. If the Charter be *not contrary* to the Preſcription, it ſhall be good by way of Confirmation. And by Crook J. As to the holding the Court by Preſcription and by Charter, it may be good if it be only by way of Confirmation. And Ibid. 25. S. P. But if the Style had been with a (Vel) viz. by Preſcription (or) by Charter, this had been clearly void. But where the Charter is *in Augmentation of the Cuſtom by way of Addition* this is good, and may well be as a Grant and Confirmation, viz. a good Grant to hold as before, with an Addition thereunto as in the Charter is expreſſed, and in this Manner the Charter, Cuſtom, and Preſcription, may well ſtand together.——S. P. agreed by the Court in a Preſcription for Common of Turbary. Mo. 818. pl. 1107. Hill. 9 Jac. in the Star Chamber, Crew v. Vernon.

The *King by his Charter cannot ouſt the common People of their Right of Inheritance which they have in the Common Law*. Br. Preſcription, pl. 82. cites 8 H. 4. 19. per Gaſcoign. —— *As* where the *Mayor and Burgeſſes of Oxford have uſed* Time out of Mind *to have Conuſance of Aſſiſe before them, and of other Pleas, and to hold Plea by Writ of Right before them, and after the King grants to them Conuſance of Pleas by Charter*, this is void for the Cauſe aforeſaid. Ibid.——*And* it was ſaid, That becauſe they *in Court of Record had accepted the Franchiſe by Charter of Conuſance of Pleas*, they had *loſt the Advantage to hold Plea by Writ of Right by their Uſage*.——S. P. that if a Man has *Liberties by Preſcription, and after* takes thereof *Grant of the King by Patent*, this ſhall determine the Preſcription; For Writing ſhall determine Contract and Matters in Fact. Br. Preſcription, pl. 102. cites 33 H. 8.——S. P. Br. Lect. Stat. Limit. 39.——S. P. Palm. 494.

Action againſt an Abbot, where *the Abbot and his Predeceſſors* Time out of Mind have *uſed to find a Chaplain in the Church of J. N.* and *after by Deed indented between them it was recited, where Variance was between them, for the finding of the ſaid Chaplain, and that becauſe the Abbot had uſed as above* &c. *the Abbot and Covent granted that they would find a Prieſt* &c. and for not doing it the Action was brought, and made Title in the Count upon the Preſcription; per Frowick Ch. J. and Fiſher, and Vaviſor J's. the Preſcription remains, becauſe the Deed is *in Affirmation of the Preſcription, and of the ſame thing*, and not contrariant, and the Deed recites the Preſcription, ſo that it appears that *the Intent of the Deed is to perform the Preſcription, and not to take away* the Preſcription. Br. Preſcription, pl. 35. cites 21 H. 7. 5. ——*Contra if* the Grant had been *contrary to the Preſcription* Ibid.——*As* where the *Preſcription* had been [for] *one Day, and the Grant had been* [for] *2 Days in a Week*. Ibid.——*But* per Frowick, if the *Preſcription* had been the *Wedneſday, and the Grant* had been the *Friday*, the Grantee ſhould have both. Ibid——Br. Eſtoppel, pl. 210. cites S. C.——Br. Grants, pl. 56. cites S. C.——Fin. Law 8vo. 59. cites S. C.——Palm. 494. cites S. C.——*Compoſition by Deed* does not determine Preſcription, if it *agrees with* the Preſcription; and yet if A. has loſt Common &c. and takes *Grant by Patent* of it of the King, or of any other *by Deed*, this determines the Preſcription by Eſtoppel. D. 153. b. Marg pl. 13. cites Paſch. 38 Eliz. C. B. Sheldon v. Hodges. —And Br. N. C. pl. 206. 21 H. 7. 5.

D. 114. Marg pl. 61. cites 28 Aſſ. pl. 4.

6. A Title gained by Preſcription cannot be deſtroyed by Interruption of the Poſſeſſion for 10 or 20 Years. Co. Lit. 114. b.

7. But Unity of Poſſeſſion of as high and perdurable Eſtate of the Thing claimed, and of the Land out of which it is claimed by Preſcription, will deſtroy the Preſcription; Becauſe it is in the Right. Co. Litt. 114.

8. In

8. In Writ of Meſne, **if upon Iſſue joined upon the Acquital, Time out of Mind &c.** the Jury find that the Grandfather of the Plaintiff was infeoffed by one Agnes, and that Agnes and her Anceſtors were acquitted by the Anceſtors of the Defendant, Time out of Mind, but no Acquittal had been after this, **yet the Plaintiff ſhall have Judgment upon this Verdict, becauſe the Title of Acquittall being once veſted by Preſcription, cannot be taken away by a** tortious Ceſſer of late Time. 15. E. 3. Judgment. 133. 14. E. 3. ibidem 155. Co. Litt. 114. b.

9. If a Man, and all thoſe whoſe Eſtate &c. have paid a Modus Decimandi **in lieu of certain Tithes,** and after by 20 Years laſt paſt he pays thoſe Tithes in Kind; **yet this does not deſtroy the Preſcription; For it is not any Waiver of the Preſcription; and notwithſtanding the Payment of Tithes in Kind for this Time, yet the Preſcription continues in Right. Mich. 43, 44. El. B. R. between** *Nowell* **Plaintiff, and** *Hicks*, **Vicar of Edmonton, adjudged in Prohibition. Co. Litt. 114. b.**

10. If a Man has had a Common by Preſcription, and takes a Leaſe of the Land, in which it is to be taken, for twenty Years, **by which the Common * is ſuſpended, yet after the Years ended he may claim the Common generally by Preſcription; Becauſe the Suſpenſion was only to the Poſſeſſion, and not to the Right, and the Inheritance of the Common always continued. Co. Litt. 114. b.**

And when a Preſcription or Cuſtom * Fol 272. makes a Title of Inheritance, the Party cannot alter or *waive* the ſame *en Pais*. Co. Litt. S. 178. pag. 114. b.

(U) In what Caſes.

1. A Man ſhall never preſcribe for what the Law gives him of Common Right; For Uſage is *only where there is a Defect of Common Right.* Cro E. 792. Mich. 42 & 43 Eliz. C. B. Pill v. Towers. Noy, 20 S.C.

2. A Vill cannot preſcribe *that Part* of the Vill, *or ſuch a Houſe in the Vill is* Deviſeable, or *Gavelkind, where the reſt is Guildable.* Br. Preſcription. pl. 53. cites 40 Aſſ. 27. Br. Cuſtoms, pl. 37. cites S. C.

3. A Parſon preſcribed, that he and his Predeceſſors have been ſeiſed of the *Tithes in ſuch a Place*, Time out of Mind; and admitted for a good Preſcription, quod nota; and this where the Place was *not in his Pariſh*; For where it is in his Pariſh he need not preſcribe. Br. Preſcription, pl. 85. cites 14. H. 4. 17.

4. A Man may preſcribe *in Rent-charge, and to diſtrain for it when it is Arrear*, which appears in the Caſe of Aſſize of the **Abbot of Stratford v. the Parſon of Layton,** for certain Thread of Cotton, Wax, Oil, Incenſe &c. to make Taper, and the Lamp in the Church of L. And there per Danby and Priſot it ſhall be *intended Rent Service.* Brooke ſays *quære* inde, *where no Tenure is alledged.* Br. Preſcription, pl. 84. cites 35 H. 6. 6, 7.

5. Where a Man *Juſtifies, or Intitles himſelf to Common Appendant, or to a Common Way*, he need not to preſcribe Time out of Mind; For theſe Words Common Way and Appendant *imply Preſcription* Time out of Mind. Br. Preſcription, pl. 39. cites 21 H. 7. 53. Per Coningsby and Brudnell Juſtices.

6. Nothing can be preſcribed for, that cannot at this Day be raiſed by Grant; For the Law allows Preſcriptions, only *in Supply of the Loſs of a Grant.* Antient Grants happen to be loſt many Times, and it would be hard that no Title could be made to Things that are in Grant, but by ſhewing of a Grant. Therefore upon Uſage *Temps dont &c.* the Law * *preſumes* a Grant, and a lawful Beginning, and allows ſuch Uſage for a good * S. P. Arg. 4 Rep. 86. Paſch. 43. Eliz. in Luttrel's Caſe. —S P Skin. 239. Mich 1 Jac. 2. B R

per Herbert Ch. J. in the Case of James v. Trollop.

a good Title; but still it is but in Supply of the Loss of a Grant; And therefore for such Things as can have no lawful Beginning, nor be created at this Day by any Manner of Grant, or Reservation, or Deed that can be supposed, no Prescription is good. Arg. Vent. 387. cites 11 H. 7. 13, 14. 13 H. 7. 16. per Keble 21 H. 7. 40.

S. P. Br. Prescription. pl 71. cites 8 E 4, 5. and that for *Heriot Custom*; because it is for his *own Goods*. Br. Lect. Stat. Limit. 45.

7. Where the *Common Law will serve* a Man, he shall not prescribe, as to remove a Nusance. Br. Lect. Stat. Limit. 43, 44.

Prescription cannot be to distrain for a Rent-Service. ——— So a Man cannot prescribe

But he may by Prescription *enlarge its Authority*, as to hold Plea above 40 s. and the like

8. A Man shall never prescribe *to have a Court Baron within his Manor*; Because it is of *Common Right*, and cannot be by Prescription; For it is incident to a Manor. Cro. E. 792. Mich. 42 & 43. Eliz. C. B. Pill v. Towers.

Ibid. —— And tho' the Prescription was laid *to hold it before the Steward* of the Manor, which is against Common Right, yet it is not good. Ibid.

(W) Failer of Prescription.

1. A Writ of Mesne was brought by the Tenant against his Lord upon an *Aquittal by Prescription*; Issue was joined upon the Prescription, and the *Jury found, that the Defendant and his Ancestors*, and they whose Estate the Defendant has, *have acquitted the Ancestors of the Plaintiff*, and those whose Estate he has, from Time whereof Memory &c. *but not in the Time of the Plaintiff, nor of his Grandfather*; the Plaintiff recovered by this Verdict; For the Effect of the Prescription is found. This Judgment was affirmed in Error. Qui hæret in Litera, hæret in Cortice. Jenk. 12. pl. 21. cites 14 E. 3. Fitzh. Judgment 155.

5. Upon a Prescription for a Modus decimandi, Way or Common, if the Verdict *finds no Modus, Way, or Common for twenty or forty Years; but that before that*, from Time beyond Memory, *there was such* Modus, Way, or Common; This Verdict finds for the Prescription. Jenk. 12. pl. 21.

So where a Man prescribes to have *Common in gross*, if he *proves* that he has *Common appurtenant*, it does not maintain the Issue; for it is not the same Common. Cro. E. 563. Pasch. 39 Eliz. C. B. in Case of Lovelace v. Reynolds. —Cites 10 E. 4. 17.

3. A. has *Common for* 100 *Sheep*, as appurtenant to a House and 200 Acres of Land, and he purchases other Land, and has Common as appurtenant to that Land *for* 100 *Sheep more*; these are two *distinct* Commons, and in intitling himself, if he pleads Prescription intirely for a Common appurtenant to both Houses and Lands together for 200 Sheep, he has fail'd of his Prescription; for he *must make two several Titles*, and Prescription for 200 *Sheep*, and not join both in one. D. 164. pl. 59. 4 & 5 Mar. Basket v. Lord Mordaunt.

S. C. cited by Popham, Cro. E. 405. in Case of Gray v. Fletcher,

4. One prescribed *to have Pot-water* out of such a River &c. and the Jury *found*, that *he ought to have it, paying* 6 *d.* every Year. It was adjudged, That he had failed in his Prescription; cited by Popham Ch. J. 5 Rep. 78. in Grey's Case, as a Devonshire Case.

where Popham said he was of Counsel in the Cause ——— S. C. cited by Popham, Win. 22. in Case of Empson v. Bathurst. ——*So* in Trespass Quare clausum fregit, the Defendant prescribes to have *Common* in the Place &c. and it was *found* that the Defendant had used to have the *Common, paying a Penny yearly* to the Plaintiff; and if that Issue is found for or against the Defendant, was the Question; and adjudged against the Defendant. The Prescription is intire, and the Payment of the Penny is Parcel of h at, and shall be intended as antient as the Common is. Noy 59. Lovelace v. Reynolds.

5. A. preſcribed to *grant an Office Alicui perſonæ*, or *Cuicunque* perſonæ Idoneæ voluerit; this Preſcription will not warrant a Grant to two Perſons. Per Dyer. 3 Le. 33. Mich. 15 El. in C. B.

6. In Treſpaſs the Defendant juſtified as in his Freehold; the Plaintiff made Title that the Locus in quo &c. was Parcel of the Manor of D. and *demiſable* Time out of Mind &c. *by Copy* either *in Fee, Tail, or for Lives* &c. and that it was granted to the Plaintiff by Copy in Fee. This Preſcription was travers'd. It was *found*, That the Lands had been Time out of Mind *granted in Fee, but never in Tail*: The whole Court held, that it was found for the Plaintiff; for the alleging that it had been demiſable in Fee, in Tail, or for Lives, was but the Conveyance to his Title; and being found that it was demiſable in Fee, and that it was demiſed in Fee, that is the Effect and Subſtance of his Title, which is ſufficient; wherefore the Plaintiff had Judgment. Cro. E. 431. Mich. 37 & 38 Eliz. B. R. Doyle v. Wood.

Mo. 359. pl. 490. adjudged. S. C. by Name of Dorley v. Wood.

7. Where one preſcribes to have *Common* appurtenant *to his Houſe and* 20 *Acres* of Land, and it appears upon Evidence that he *has but* 18 *Acres*, or a leſs Parcel, yet he has not failed of his Preſcription; but if he had 20 Acres, and 10 *Acres are Freehold, and* 10 *Copyhold*, he there fails of his Preſcription; for he cannot make one Preſcription for both. So it is if *Part was Copyhold* 100 *Years ſince, but now is Freehold*. Cro. E. 531. Mich. 38 & 39 Eliz. C. B. Gregory v. Hill.

In Replevin Iſſue was taken, whether J. M. and all thoſe whoſe Eſtate &c. had uſed to have *Common for all* their *Beaſts Levant and Couchant upon* a Meſſuage 200 *Acres of Land*, 50 *of Meadow, and* 50 *of Paſture in* 4 *Towns*. The Jury *find*, that the ſaid M was ſeiſed of the ſame Houſe, Land, Meadow and Paſture in the ſame 4 Towns, but that he had his *Common, as belonging only to* the Meſſuage, and 200 *Acres of Land*, 20 *of Meadow, and* 20 *of Paſture in two of the Towns*, and not to the reſt; whereupon Judgment was given againſt the Plaintiff, as failing in his Preſcription. Hob. 209. Mich. 15 Jac. Mitchell v. Mortimer.

8. If A. preſcribes for *Common for* 100 *Sheep*, and the Jury find that he has Common for 100 *Sheep and* 6 *Cows*; this is no Failure of Preſcription; Per Cur. But Per Walmſley, if the Jury had found Common for 120 *Sheep*, and ſo more of the ſame Kind than he had alleg'd, he had failed. Cro. E. 722. Mich. 41 & 42 Eliz. B. R. Buſhwood v. Bond.

S. P. Show. 347. Burgeſs v. Steers.—12 Mod. 25. Bruges v. Seer.——*So* if a Man preſcribes that he has *Common for Sheep only*, and the *Jury find* Common *for Sheep and Great Cattle*, the Common is found for the Plaintiff. Per Nichols. Brownl. 178. Trin. 12 Jac. in Caſe of Johnſon v. Thorowgood.——*So* if one claims *Common all the Times* of the Year, *when the Lands lie* fallow, *and* when it is *ſown* from ſuch a Day unto &c. and his Cattle are taken in the Year when it is ſown, or lies fallow, it is ſufficient for the Plaintiff to preſcribe for Common, either in the Year when it is ſown, or when it lies fallow; and if the Jury find all the Common, it is ſufficiently found for the Plaintiff. Ibid. ——*So* if a Man hath Common *from ſuch a Day to ſuch a Day*, and the Cattle are taken at a Day between the Days, and he preſcribes that he hath Common in the ſaid Time, quo &c. and the Jury find he had Common before that Time the ſame Day and after, the Verdict is found for the Plaintiff; Per Nichols, quod Warburton & Winch conceſſit. Ibid —So where a Man preſcribed *for Common of Paſture for all his Sheep* Levant and Couchant &c. it was *found by Verdict that he had Common for Sheep and for all other Cattle* &c The Court held that the Action being only for impounding Sheep, the Plaintiff might well *abridge the Preſcription, as to them only, ſince nothing elſe was in Diſpute*; and the finding that he had Common for other Cattle, does not falſify his Preſcription, but ſtands with it; and the Plaintiff had Judgment. Carth. 219. Paſch. 4 W. & M. B. R. Burgeſs v. Searle.——*But* if a Man preſcribes for *Common for all Cattle &c. at all Times in the Year*, when it appears by the *Evidence that Sheep were excepted for ſome Time of the Year*; this is a Failure of the Preſcription; therefore the Preſcription *ought to have been ſpecially pleaded with this Exception.* Reſolved per Cur. Carth 241. Paſch. 4 W. & M. The King v. Inhabitants of Hermitage.——*So* where the Defendant had preſcribed for Common *for all Sheep Levant and Couchant* &c. and the *Evidence was*, that he had Common *for his own Sheep only*; it was objected that the Evidence did not maintain the Preſcription; and of this Opinion was all the Court, becauſe as the Preſcription was laid, *Sheep agiſted* or otherwiſe Levant and Couchant ought to have Common, which is not warranted by the Evidence; for that is, that he has Common for his own Sheep only. Palm. 362. Earl of Devon v. Eyre.

9. Lord preſcribes *to diſtrain the Beaſts of his Tenant for not doing Suit* to his Court; if he diſtrains the Beaſts *of his Undertenant*, this is not within the Preſcription. Cro. E. 792. Mich. 42 & 43 Eliz. C. B. Pill v. Towers.

Noy. 20. Pell v. Towers. S. C.

A Man prescribed to *Tether Equos & Boves* upon such a Baulk, this Prescription justifies his using it with *Mares or Cows*; for the Horse and the Ox are but Instances; and the Defendant is not tied up precisely to that Kind of Beasts in his Plea; for the Main Matter is, that the Grass there growing has been eaten by him. Clayt. 54 pl. 94. Sir Thomas Danby's Case.

10. In Replevin for *taking one Horse, one Gelding, and two Cows* &c. the Defendant avow'd for Damage feasant; Plaintiff in Bar *prescribed* in the Place where &c. for Common Appurtenant *Pro omnibus Equis, Vaccis &c.* Defendant demurr'd, because this Prescription did not maintain the Declaration; for *nothing is said as to Geldings.* And of that Opinion was Anderson; but the other Justices contra, and that the Prescription was good; for *Equus* is a general Term, and *comprizes both Horses and Geldings, but not Mares.* And the Court said, that all the Justices of Serjeant's-Inn, with whom they had conferr'd about it, except one, were of the same Opinion: Wherefore it was adjudged for the Plaintiff. Cro. E. 798. Mich. 42 & 43 Eliz. B. R. Stapleton v. Morse.

Suggestion in a Prohibition was, that the Plaintiff Time out of Mind *had paid a Modus* of 2 s. *for Wool and Lambs*, but *proves nothing of the Wool.* And it was moved for a Consultation, because the Surmise is of a Joint Prescription and Modus Decimandi for Wool and Lambs, and no Proof being made of the Wool, he had failed in all. But per Cur. *There is a Difference between a Suggestion to have Prohibition*, and a Prescription compriz'd in it, *and a Prescription* made *in Defence, or by Way of Plea in any Original Action*; for in the last Case a Joint Prescription made of two Things, and Failure in one destroys all, because it is *by Way of Title*; but otherwise here, because this Prohibition is only to give Jurisdiction to the Court of King's Bench. Yelv. 55. Mich. 2 Jac. B. R. The Case of Prohibition.

11. A Surmise for a Prohibition was, that Time out of Mind he had us'd *to pay* 4 *s. per Annum in Discharge of all Tithes*, and he *proved that he us'd to pay* 4 *s.* 6 *d.* per Annum; but because it appeared that no Tithes in Kind were due to the Parson, as he sued for, but that 'tis a *Modus*, tho' not in such Manner as the Plaintiff surmised, a Consultation could not be granted. Cro. E. 819. Pasch. 43 Eliz. B. R. Beal v. Webb.

12. In an Action of *Trespass* against G. he justifies by Reason of a *Common appendant* by Prescription *in* 500 *Acres.* And it was found by Verdict, that the *Ancestor had released his Common in five* of these Acres And by the Court he had failed in Prescription. The Common by that is not extinct, because it is discharged to be Common by Act of Parliament for Failure of Prescription. Noy 67. Rotheram v. Green.—— Cites D. 164. a. 284

13. If a Man prescribes, *that every one who has* 7 *Lambs, or under, shall pay to the Parson a Halfpenny for every Lamb*; and it is *found accordingly*; *and further, that if he has more* than 7, then *the Parson shall have one, and shall pay the Parishioner an Halfpenny*: He has fail'd in his Prescription per Cur. See Trial (K. g. 2.) pl. 30. Pasch. 7 Ja. 13. Castell v. Dodd.

Cro. J. 665. pl. 19. S. C. by Name of Holbach v. Warner.—— 2 Roll. Rep. 288. Holbetts v Warner. S. C.

14. In Case the Plaintiff declared that he was seised of a Close called Haye next the River O. and that the Defendant was possess'd of another called Grove-Mead-Close on the other Side of the River, and that he and all the *Possessors* of Grove-Mead-Close Time out of Mind *have used to make a Hedge* on the Bank of the said River against the Water, *which the Defendant had not done*, by Reason whereof the Cattle pass'd over into the Plaintiff's Land from the other Side Ad damnum &c. After a Verdict for the Plaintiff, it was mov'd in Arrest of Judgment that the Prescription is ill, because it ought to have been either by Way of Custom in a Vill, or in a Person who may prescribe and aver Continuance, by Reason of his Estate; but Possessors or Occupiers are no such Persons; for that may be Possession for an Hour or less, which is no Ground for a Prescription; and for this Reason the Prescription was thought to be ill by Doderidge, Haughton and Chamberlain Justices, but Ley Ch. J. thought, that when *Damages are only demanded* by the Writ, it suffices to say, That the Possessor *solet*; but *otherwise, where the Land itself is demanded,*

manded, there he ſhall ſay *Debet & Solet*; alſo where the Land it ſelf is demanded, he ought to make the Tertenant a Party; but where the Demand is only to enjoy One's own Land, without Incumbrance by Reaſon of another's Land, it is ſufficient to charge the Occupier, and the Poſſeſſor ſhall be Tenant to this Purpoſe. Palm. 331. Hill. 20 Jac. B. R. Holbedg v. Warner.

15. In Treſpaſs for Feeding his Paſture Ground &c. the Defendant preſcribed, that he and all thoſe whoſe Eſtate he had in the Manor of Hatſop, had *Common for all Sheep Levant and Couchant* on the ſaid Manor; upon the Trial the *Evidence was*, that this *Manor was purchaſed by the Plaintiff of two Coparceners*, and that he bought *the Fee of one Moiety firſt, and at the ſame Time had a Leaſe of the other Moiety for Years*, and *afterwards purchaſed the Fee of that Moiety*. It was mov'd that he had failed in his Preſcription, becauſe the Purchaſe of the Manor was by Parcels, and he has made one intire Preſcription for the Common to the whole Manor, whereas he ought to have made a ſpecial Preſcription, becauſe the Parcels were once ſever'd. And Ley Ch. J. and Doderidge J. were of this Opinion; for when by Act of the Party the Manor is once ſever'd, there, tho' it be re-united, yet he ought to make a ſpecial Preſcription to the Common; Otherwiſe, had it been ſever'd by Act of Law, as Partition. Palm. 362. Hill. 20 Jac. B. R. Earl of Devon v. Eyre.

And Ley Ch. J. ſaid, That there is a Difference when the *Severance* is *by Moieties or three Parts*; becauſe there is not any Severance or Partition, but a divided Moiety in the whole, and the Common runs throughout the Manor; ſo that the Common may be intire; otherwiſe if it were *by Meets and Bounds*. Ibid.——And Doderidge J. held the Preſcription ill, becauſe it is uncertain whether it be Common Appendant or Appurtenant; but as to this Haughton held the Preſcription good; for he held the Manor intire and re-united, and the Preſcription ſhall be accordingly. Ibid.

16. In Treſpaſs the Defendant juſtified *for Common from* the *carrying away of the Corn till it was reſowed with Grain*. The Plaintiff replies that at the Time of the Treſpaſs ſuppoſed it was *ſowed with Turnips*. The Opinion of the Court was, that it was not ſuch Grain as was intended in the Preſcription. Freem. Rep. 51. pl. 63. Mich. 1672. Bruerton v. Right. in C. B.

17. Treſpaſs. The Defendant juſtified by a Preſcription for a *Way to a certain Cloſe*; the Plaintiff replied, that he *brought a Load of Hay along that Way that grew upon another Cloſe*; and the Defendant demurr'd, and adjudged againſt him; for if a Man hath a private Way to a Cloſe, he ſhall not enlarge it to other Purpoſes. Freem. Rep. 247. pl. 259. Hill. 1677. Webſter v. Bach.

So where Caſe was brought for diſturbing the Plaintiff in the Uſe of a Way, the Plaintiff declared that he was ſeiſed in Fee of a Cloſe called L. and of a Meadow called G. and ſo preſcribed *for a Way leading thro'* a Place called *B.-Lane to* a Place called *L.-Lane, and thence to his ſaid Cloſe called L.* and that the Defendant had ſpoiled B.-Lane, with his Carts and Carriages; ſo that the Way was of no Uſe to the Plaintiff &c. The Defendant pleaded that W. V. was ſeiſed in Fee of a Cloſe called B.-Cloſe, and then lays a Preſcription in the ſaid W. V. for a Way through B.-Lane to the ſaid Cloſe, and ſo back again, and juſtified as Servant the going thither with his Carts &c. the Plaintiff in his *Replication* confeſs'd that W. V. was ſeiſed &c. and had a Way from the Lane to the Cloſe, but that the Defendant, in uſing the ſaid Way, did *go beyond that Cloſe to another Cloſe* called Warton Langdales, *and ſo back again*, the Defendant rejoined as before, without alleging any new Matter; and upon Demurrer to the Rejoinder, the whole Court reſolved that the Defendant having preſcribed to a Way only to B. Cloſe, he cannot juſtify the going beyond it into the other Cloſe of W. V. called W. L. Judgment was given, but not entered upon the Roll. Lutw. 111. 113. Trin. 7 W. 3. Laughton v. Ward.——*So* where A. had a *Way* over B.'s Ground to *Bl. Acre*, and *drove his Cattle* over B.'s Ground to Bl. Acre, and *thence to another Cloſe lying beyond*, it was urg'd, that when the Beaſts were at Bl. Acre, the Defendant might drive them whether he would. But it was anſwered, That by this Means the Defendant might purchaſe 1000 Acres adjoining to Bl. Acre, and ſo the Plaintiff would loſe the Benefit of his Land, and that a *Preſcription preſuppoſes a Grant, and ought to be continued according to its Original Creation.* And to this the whole Court agreed, and Judgment was given accordingly for the Plaintiff. Mod. 190. Mich. 26 Car. 2. C. B. Howell v. King.

18. In *Reſcous* of 300 Sheep the Defendants pleaded, That the late Biſhop of N. was ſeiſed in Fee of the Manor of N. and that the ſaid Biſhop, and his Predeceſſors, Time out of Mind, had *Liberty of Faldage and a Fould-Courſe for* 300 *Sheep in and upon the Plaintiff's Cloſes* at certain

tain Times of the Year, *and ſo juſtifies the putting in his Sheep*, under a Leaſe from the Biſhop of the ſaid Faldage and Fould-Courſe, and *that they were depaſturing there* &c. The Plaintiff in his Replication made Title to himſelf of the Cloſes, under a Grant from the Biſhop, before the Leaſe made to the Defendants, and traverſed the Preſcription of the Liberty of Faldage and Fould-Courſe; The Defendants take Iſſue upon the Preſcription, and had a Verdict; but it was moved in Arreſt of Judgment, that a Preſcription to have a Faldage and *Fould-Courſe can never extend to give a Right of Common*; becauſe the Nature of Faldage is to have other Men's Sheep folded on my Lands; And therefore the Defendant having confeſſed the Treſpaſs, and not made a good Juſtification, the Judgment was arreſted. 2 Lutw. 1249. Trin. 3 Jac. 2. Sharpe v. Bechenowe.

19. In an Action on the Caſe for diverting a *Water-courſe running to the Plaintiff's Houſe*, if, upon the general Iſſue pleaded, it had been *proved, that the Water did not always run to the Plaintiff's Houſe, but* that it *was uſually dried up in the Summer, or drank up by the Cattle of the Defendant*, (by whoſe Cloſes it paſſed, and where he had uſed to dig Holes to hold ſome Water for his Cattle) in ſuch Caſe the Plaintiff would have *failed of his Preſcription*. Carth. 117. Paſch. 2 W & M. B. R. Murgatroid v. Law.

20. Treſpaſs Quare Clauſum fregit; the Defendant pleaded, That D. P. was ſeiſed in Fee of a Mill and a Weare, and preſcribed *to have Ingreſs into the Plaintiff's Cloſe to repair the ſaid Weare* when it was in Decay, and that he as Servant to him entered for the Purpoſe aforeſaid. The Plaintiff in his *Replication*, confeſſed the Seiſin, and the Cuſtom to repair &c. but *that T. S. had extended the Weare beyond the uſual Place* &c. upon which they were at Iſſue. See 2 Lutw. 1515. the Pleadings, but neither Judgment nor Argument. Paſch. 12 W. 3. C. B. Morgan v. Evans.

(X) Pleading a Preſcription againſt a Preſcription.

* S. P. per Cur. Freem. Rep. 210. pl. 27. Mich. 16-6. in Caſe of Hickman v. Thorny.

1. ONE Preſcription may be pleaded againſt another, *where the one may ſtand with the other*; as for Inſtance, Where a Copyholder of a Biſhop preſcribed, that all Copyholders within the Manor had been diſcharged of Tithes. *But not where one* Preſcription *is againſt another*, *as* where *one* preſcribes *to have* * *Lights* to his Houſe, *and the other* preſcribes *to ſtop them* up. Per Coke Ch. J. in the Caſe of **Hughes v. Keene** Godb. 183. pl. 262. cites the firſt Point as adjudged in the Caſe of Wright v. Wright.

S. P. per Cur. Freem. Rep. 210. pl. 27 in Caſe of Hickman v. Thorny.

2. If A. has a *Way over B's Land* to his Franktenement by Preſcription Time out of Mind &c. B. cannot allege a Preſcription or *Cuſtom to ſtop the ſaid Way*; For it is a lawful Eaſement, and one Cuſtom is as ancient as the other. 9 Rep. 58. b. Mich. 7 Jac. Aldred's Caſe.

3. The Plaintiff preſcribed *for a Fould-courſe for* 300 *Sheep*, in 70 Acres of Land in B. every Year, from 14 Days *after the Corn carried away till Lady-Day*, within the Lands not ſowed again; The Defendant *pleaded*, that there is *a Cuſtom* within the ſaid Town of B. *that any one may incloſe any Part of his Lands lying in the common Field*. *But* the Plea in Bar was adjudged not good, becauſe he *does not traverſe the Preſcription in the Declaration*; For a Preſcription cannot be pleaded againſt a Preſcription. But the Preſcription alleged in the Count ought to be anſwered. Cro. C. 432. Hill. 11 Car. B. R. Spooner v. Day and Maſon.

2 Mod. 104, 105. Trin.

4. The Defendant avows for Damage-feaſant in Freehold. The Plaintiff replies, that he was ſeiſed of a Houſe and two Acres of Land in B. and

and that he preſcribes *for Common* belonging to the ſaid *Houſe, and two Acres of Land in the Field of D.* whereof the Locus in quo was Parcel. The Defendant *rejoins*, that there was *a Cuſtom* in the ſaid Fields, *that any Owner of Lands might incloſe any Parcel of Land lying together in the ſaid Field*, and exclude the Commoners in the ſaid Field. The Plaintiff demurs and objects, that this Rejoinder is naught; becauſe here is a Preſcription pleaded againſt a Preſcription, without traverſing the firſt Preſcription which is * not good, according to † **Aldred's** Caſe. 58. 1 Cro. 432. But the Court ſeemed to incline, that it may be well enough; for a *particular Preſcription may be controlled by a general Cuſtom*, though it cannot by another Preſcription; For where a Cuſtom is, which is of a greater Extent and Latitude than the Preſcription, there it may be good without traverſing the Preſcription; for if one or two Men incloſe, yet the Party has his Common in the Reſidue, and ſo it may ſtand with Preſcription. The Defendant conſented to pay Coſts and amend. Freem. Rep. 210. pl. 217. Mich. 1676. Sir William Hickman v. Thorny.

28 Car. 2. S. C. ſays, That Atkins J. doubted much of this Caſe, becauſe the Defendant had pleaded this Cuſtom to incloſe in Bar of a Freeholder who had no Land in the Common Field, but preſcribed to have ſuch Right there as appendant to two Acres of Land which he had elſewhere, for which reaſon the Defendant prayed to amend upon Payment of Coſts. —— Freem. Rep. 211. S. P. per Cur. —— * S. P. Carth. 116. Paſch. 2 W. & M. B. R. in Caſe of Murgatroid v. Law. —— † 9 Rep.

(Y) Pleadings.

1. IT was preſented, *that J. S. by reaſon of his Tenure, had uſed to repair ſuch a Bridge*, and did *not ſay, that he and thoſe whoſe Eſtate he has* &c. *have uſed* &c. And per Cur. the Preſentment is good when he ſays, *That by reaſon of his Tenure* &c. he ought to repair &c. For this *implies Title of Preſcription.* Suliard ſaid, It is not good to ſay that he and his Anceſtors have uſed &c. And per Fairfax, this is true; For he *cannot be charged by the Act of his Anceſtor without Profit to be taken by it*; Contra of ſuch Preſcription againſt an Abbot; For the Houſe and the Thing continues, but by reaſon of Tenure as above this implies a Profit. And this by the Juſtices. Br. Preſcription, pl. 78. cites 21 E. 4. 38.

As to Bridges.

Br. Preſentment in Courts, pl. 18. cites S. C.

2. In Treſpaſs the Uſe and Preſcription of *Common appurtenant* was put in Iſſue, and yet this *is in the Right*, and the *Action is in the Poſſeſſion.* Br. Preſcription, pl. 89. cites 22 Aſſ. 63. and 30 Aſſ. 42. and 40 E. 3. 31. and 22 H. 6. 51. and 7 E. 4. 26. accordingly; and yet 40 E. 3. 10. he was put out of this Plea. *And* ſo by Finch *in Replevin*, where the *Plaintiff juſtified for Common appendant.* And he ſaid, that the Preſcription ſhall be traverſed *in Quo Jure*, which is in the Right. Br. Preſcription, pl. 89. cites 22 Aſſ. 63.

As to Common. See pl. 17. in Notis, 18. 20. 23. 31.

3. In Treſpaſs, for trampling and feeding his Graſs. The Defendant pleads in Bar, that the Borough of D. is an ancient Borough, and that the Defendant Tempore quo & diu antea was a Burgeſs of the ſaid Borough; that the *Mayor and Burgeſſes for themſelves, and for every Burgeſs* of the ſaid Corporation, *had Common in the Place where, for all their Commonable Cattle*, and that he put in the ſaid Cattle to uſe his Common. Upon Demurrer it was objected by the Court, That the Defendant has preſcribed *for Common in Groſs Sans Nombre*, when there is no ſuch Common; for if it ſhould, then the Corporation might ſurcharge the Common, there being no Reſtraint to the Number of their Cattle; therefore he *ſhould have preſcribed for all Cattle levant and couchant within the Vill*; To which it was anſwered, That there is no Danger of ſuch Common being ſurcharged, for in ſuch Caſe the Lord or Owner of the Soil may diſtrain, but that this being Claim of Common in Groſs, and not Appendant or Appurtenant, it had been improper to preſcribe for

Mod. 6, 7. pl. 20. S. C. by Name of the Corporation of Derby, but not ſaid to be adjudged. — 2 Lev. 246. Hill 30 & 31 Car. 2. B. R. **Stables** v. **Wilton.** The Court held, that it might well be Common in Groſs, and not appurte-

nant to any Land, and cited 9 H. 6. 36. and 1 Rep 87. As if a Man grants Common to a

Cattle Levant and Couchant. But it was adjudged, that the Plea was ill, becauſe the Defendant in his Preſcription did *not aver, that the Cattle were Levant and Couchant within the Vill*, and that it had been good, if thoſe Words had been put in; But Kelynge Ch. J. ſaid poſitively, that there could not be any * Common in Groſs Sans Nombre. 1 Saund. 344. Mich. 21 Car. 2. B. R. Mellor v. Spateman.

Mayor and Burgeſſes for all their Cattle in ſuch a Place it is good and in Groſs, and not appurtenant, and gave Judgment accordingly. —— 2 Jo 115. S. C. by Name of Staples v. Mellor, where the Preſcription was laid for the Beaſts of every Freeman of the Vill, and the Court held the Preſcription good, and Judgment accordingly, and cited 21 E. 4. 66. —— 2 Show. 43. S. C. ——— 2 Keb. 527. pl. 26. S C. adjornatur. —— 2 Keb. 550. pl. 28. S C. and per Cur. this is a void Preſcription, yet may be good by way of Grant. But adjornatur. ——— 2 Keb. 570. S. C. adjudged ——— * 2 Sid. 87. Trin 1658. Stonesby v Muſſenden. S. P. but being after a Verdict it was held good. —— S.C. cited by Twiſden. Mod. 7. in Caſe of the Corporation of Derby.

Double. See pl. 7. 44. 46. Br Preſcription. pl. 96.

4. *Appendancy and Preſcription*, or Matter which proves Appendancy and Preſcription, ſhall be double. Br. Double, pl. 115. cites 11 H. 6. 11.

cites S. C. — S. P. that it is double. Br. Double, pl. 136. cites 4 H. 6. 13 — S P. Br. Preſcription, pl. 23. cites it as ſaid elſewhere, —— But Br. Double, pl. 111. cites 13 H. S. 15. contra.

But it ſeems, that Gift in *Frankalmoign After Time of Memory*, and *Preſcription* ſhall be double. Br. Double, pl. 83. cites 39 H. 6. 29.

5. In Writ of *Meſne*, the Plaintiff *counted, that Land is held of the Defendant by the Plaintiff Abbot of E. in Frankalmoign, and that the Defendant and his Anceſtors whoſe Heir* &c. *have acquitted the Plaintiff and his Predeceſſors Time out of* &c. and *Iſſue taken upon the Preſcription*; Exception was taken, that it was Jeofail by reaſon of the Doubleneſs, viz. the *Frankalmoigne*, and the *Preſcription*, where each of them is a good Cauſe of Acquittal. And per Choke, it is not double, becauſe the Iſſue is taken upon the one, viz. the Preſcription, and ſo he relies upon one to avoid the Doubleneſs. But per Priſot, it is not double, becauſe the *Frankalmoign is not ſufficient Cauſe by itſelf; For he does not ſhew the Gift* in Frankalmoigne, *and therefore it ſhall be taken a Gift given before Time of Memory, and then he ought to preſcribe in the Manner of Acquittal*, and then the Preſcription is the Effect &c. and ſo ſingle; and after it was awarded good, and the Plaintiff recovered the Acquittal. Br. Double, pl 83. cites 39 H. 6. 29.

Cro. E. 784. S. C.

6. If a *Copyholder lays a Preſcription in the* Biſhop of W. *Lord* of the Manor *for himſelf and* his *Tenants* to be diſcharged of Tithes, *and then preſcribes for the Copyhold.* Though here is a Preſcription upon a Preſcription one in the Copyholder to make his Eſtate good, and the other in the Lord to make his Diſcharge good, yet it was held that a Prohibition lay for the Copyholder. Yelv. 2 Paſch. 44 Eliz. B. R. Croucher v. Fryar.

As to Eſtovers. * Br Preſcription, pl. 96. cites S. C. *But* if

7. In Treſpaſs the *Defendant claimed Eſtovers appendant in the Place where* &c. and preſcribed that he and all thoſe whoſe Eſtate &c. have had Eſtovers in the Place &c. appendant *to ſuch a Houſe* Time out of Mind, and admitted for good, viz. the Appendancy and Preſcription. Br. Preſcription, pl. 87. cites 21 E. 3. 40, 41. ——— But by 11 H. 6. 11. this is * *Double*, and with this agrees 4 H. 6. 13. Ibid.

he ſays, *that he and thoſe whoſe Eſtate* &c. *in a Houſe in C. have had Eſtovers in C.* this is well; per Cott, Paſton, and Martin; for this is not Appendancy.

How. See pl 5. 27. S. P. Br. Action ſur le Caſe, pl. 47. cites 12 H. 4. 7.

8 Preſcription in the Defendant, *that he and all others Tenuram illam prius habentes ought and uſed to cleanſe ſuch a Ditch*, and therefore the Writ was abated; For *it ſhould be, that he and his Predeceſſors Time out of Mind, whoſe Eſtate the Defendant has* &c. and becauſe not &c. therefore the Writ was *abated.* Br. Preſcription, pl. 16. cites 22 H. 4. 7. [But it is miſcited in both Places, and ſhould be 12 H. 4. 8. pl. 13.]

9. In

9. In *Annuity* the Plaintiff counted by Preſcription; the *Defendant ſhew'd, that it commenc'd by Compoſition*, therefore he ought to count upon the Compoſition. Judgment of the Count. And Per Newton and Paſton, if the Compoſition be *before Time of Memory*, it cannot be try'd, and therefore the Count good; and if it commenc'd within Time of Memory, the Jury ſhall try it. Br. Preſcription. pl. 22. cites 19 H. 6. 75.

Littleton ſaid, That Anno 18 H. 6. *in Annuity by Preſcription, the Defendant*, ſcilicet, *a Spiritual Man, pleaded, that the Predeceſſor of the Defendant in the Time of E. 1. granted the Annuity to the Predeceſſor of the Plaintiff, and to his Succeſſors, without Aſſent of the Chapter*, Abſque hoc, *that the Plaintiff and his Predeceſſors were ſeiſed before this Time, Time out of Mind*; for otherwiſe the Lay Gents will not inquire of longer Time than they themſelves can remember; and therefore this *Special Iſſue* was taken and admitted good. Br. Preſcription. pl. 5. cites 33 H. 6. 27.

10. In Aſſiſe of Common Appendant, the *Appendancy* is ſufficient without Preſcription; for this *implies a Preſcription*. Br. Preſcription. pl. 23. cites 22 H. 6. 10.

11. A Man ſhall not ſay *in Aſſiſe of Rent, that he and all thoſe whoſe Eſtate he has in a Meſſuage have had 20 Shillings Rent iſſuing out of the Land of the Defendant Time out of Mind*, if he does not *claim ſuch as Appendant* to the Meſſuage, or by Reaſon of the Meſſuage. Br. Preſcription. pl. 26. cites 22 H. 6. 42.

12. In Treſpaſs upon the Caſe, the Plaintiff preſcrib'd in himſelf and his Predeceſſors *to have Leet in D. with all Profits of it once in a Year*, ſcilicet, *Such a Day after Eaſter*; and that he ſent his Steward to hold Leet there ſuch a Day &c. and the Defendant diſturb'd him. The *Defendant, by Proteſtation that he is Lord of the Vill, and that the Plaintiff has not any ſuch Leet there, pro Placito ſays, that He and his Predeceſſors have had Leet there Time out of Mind, once in a Year, ſuch a Day after Michaelmas; and that the Plaintiff has had Leet there ſuch a Day after Eaſter Time out of Mind, and has uſed Time out of Mind to give Notice to the Bailiffs of the Defendant 15 Days before the Leet, and* that he ſhall be with him, and that the Defendant ſhall have the Moiety of the Profits; and that if he will hold the Leet there in other Manner, then the Defendant and his Predeceſſors have uſed to diſturb them &c. And becauſe he *did not give Warning by 15 Days* &c. therefore he diſturb'd &c. Danby J. thought the *Preſcription of the Diſturbance* is void, for he *has not alleg'd that he ever diſturb'd him*; and the Preſcription cannot be without Uſe, and Uſe cannot be without Matter in Fact, and he has not alleg'd any Diſturbance done in Fact; Quære, for it was well debated and adjourn'd without Judgment, but none ſpoke to the Preſcription but Danby. Br. Preſcription. pl. 41. cites 38 H. 6. 16.

13. If a Man preſcribes *to have Rent with Diſtreſs*, it is no *Plea, that the Rent has been paid all Times by Coertion of Diſtreſs*, becauſe the Rent *has been continued* Time out of Mind, and cannot be avoided by Coertion, tho' it commenced by Tort; by all the Juſtices. Br. Preſcription. pl. 75. cites 13 E. 4. 6.

Replevin &c. the Defendant avowed, for that he was *ſeiſed in Fee of* the *Rent*, *and* that he and all &c. *had uſed to diſtrain for it in the ſaid Land* &c. It was held clearly per Anderſon and Glanvile, that the Avowry was not good; for he preſcribes in the Diſtreſs, and not in the Rent itſelf. Cro. Eliz. 673. Paſch. 41 Eliz. C. B. Stephens v. Lewis.

14. The *Sheriff of W. preſcrib'd in 5 Shillings Rent in ſuch a Vill for all Sheriffs* &c. and *it was held no Preſcription*; for he is *only* as a *Tenant at Will, by which he preſcribed, that it has been uſed Time out of Mind*, as above, *and that they have uſed to diſtrain for it*. And this was held good, and ſo the Iſſue ſhall be taken upon the Uſage. Per Littleton. Br. Preſcription. pl. 28. cites 15 E. 4. 29.

And the Preſcription ſhall be *that the King and his Progenitors have* had, Time out of Mind, 5 s. of the Vill &c. *to the Uſe of him who ſhall be Sheriff for the Time*. Ibid.

15. If a Man will allege a Preſcription or Cuſtom, he ought to *ſet forth, That* it was *put in Ure within Time of Memory*. Per Godfrey Godb. 55. Mich. 28 & 29 Eliz. in Joyce's Caſe.

16. If

16. If one prescribes *to have the Dying of the Clothes in such a Place*, he ought here of Necessity especially to *aver, that he is sufficient* for to dye them; as the Custom which one hath at Torcester, to have a *Common Bakehouse*, he ought to *aver, that his Oven there is sufficient to serve them all*; and this was Sir **George Farmer's Case v. Brook.** Per Coke Ch. Just. 3 Bulst. 61. Mich. 32 & 33 Eliz. in B. R. Ball v. Collins.

17. A *Copyholder* shall prescribe *by an Usitatum est against* his *Lord. But against* a *Stranger* he shall prescribe *in Name of the Lord* himself. Per tot. Cur. Mo. 461. Hill. 39 Eliz. Anon.

Cro. E. 390. Pasch. 39 El. B. R. Pearce v. Bacon. S. C. — In Tresp. for *Taking Turf in the Waste* of the Plaintiff; the Defendant justified, for that Time out of Mind *Usitatum fuit, that every Tenant for Years of an ancient Tenement* in the said Manor *had Common of Turbary* in the Waste &c. and that he was possessed of an ancient Tenement and Close &c which was leased to him for a certain Term of Years, with all Commons thereunto appertaining. But adjudg'd, that tho' this Common was appurtenant to the Messuage and Close, yet the Lessee cannot have it by this Prescription; for an *Usage ought to be perpetual*, which cannot be in this Case, because it is interrupted by every new Lease; besides, Lessee for Years can never have Right to a Common by Prescription, because there is a certain Commencement and Determination of his Estate; and an Usage annex'd to such an Estate cannot be good. 1 Bulst. 17. Hill. 7 Jac. B. R. Grimes v. Peacock —— 2 Brownl. 222. S. C. Argu'd, but adjourn'd.

18. In Trespass for chasing Sheep &c. the Defendant justified, for that the Place where &c. was the Freehold of John Theed; The Plaintiff replied, and prescrib'd *for Common for* 60 *Sheep Levant and Couchant upon his Tenements*; and avers, that he put in 60 Sheep &c. to eat the Grass and use the Common &c. The Defendant travers'd the Prescription, which was found for the Plaintiff; and it was mov'd in Arrest of Judgment, that the Plaintiff *had *not alleg'd that the* 60 *Sheep* which he put in the Place where &c. *were levant and couchant upon his Tenements*; and if they were not, then the Defendant might lawfully distrain them Damage feasant; sed non Allocatur; for the Defendant might have taken Advantage of it by a Demurrer or a Rejoinder; but when he rejoin'd and travers'd the Prescription, which is found against him, the *Want of an Averment is aided by the Statute of Jeofails.* Saund. 226. Pasch. 21 Car. 2. B. R. Stennet v. Hogg.

* Cro. J. 44 Mich. 2 Jac. B. R. France v. Tringer. S. P. Adjudg'd. —— G. Hist. of C. B. 113, 114 cites S. C. and says, that the Gist of the Bar is the Right to burthen the Plaintiff's Soil; and when the Plaintiff takes Issue on that, and controverts that Right, he admits there was not any Trespass in the Case, and that the Defendant had such a Right. He likewise admits, that the Defendant has brought himself within that Right, because it would have been Nugatory to have denied that Right of Prescription, which, if it had been found, the Plaintiff had not brought himself within it; and therefore the Traverse of such Gist of the Bar is waved, and an Admittance of such collateral Circumstances.

19. In Replevin, the Plaintiff prescrib'd, setting forth, *that there are divers Freehold and Copyhold Tenements in the Manor, and that he is seised of a Freehold Tenement, and that he and the other Freeholders, and all those whose Estate they have, Time out of Mind, simul-cum the Copyholders have had solam & seperalem Pasturam* of the said Place, Omni Anno Omni Tempore Anni; and then he *pleads a Custom, that the Copyholders Simul-cum the Freeholders Time out of Mind have had solam & separalem Pasturam* Omni Anno Omni Tempore Anni &c. The Plaintiff demurr'd generally; Exception was taken, 1st, That laying the Prescription in himself and all the Freeholders is not good; for that every one ought to prescribe by himself, and not he for himself and all the other Freeholders. 2dly, He prescrib'd for himself and all the Freeholders, Simul-cum the Copyholders, and yet he laid a Custom for the Copyholders, Simul-cum the Freeholders, and *so mix'd a Prescription and a Custom together*, which cannot be, for the one is laid in the Person and the other in the Place; but that he ought to have said, That he and all those whose Estate he has simul-cum the Freeholders and the Copyholders Time out of Mind, have had &c. But the Court over-ruled the Exceptions upon a Case of **Kettleborough v. Wells,** Trin. 1654. where such Pleading

Saund. 350. S. C. And the Court seem'd to incline that the Plea was good.

ing was adjudg'd good. Lev. 268, 269. Trin. 21 Car. 2. B. R. Potter v. North.

20. In *Treſpaſs* for *breaking his Cloſe in L. in D.* on the 1ſt of *April*, 21 *Car.* 2. the *Defendant pleaded a Preſcription for Common*, and *juſtified* the putting in his Cattle *on the Firſt of Auguſt*, 20 *Car.* 2. *quæ eſt eadem* Tranſgreſſio &c. and upon Demurrer it was objected to this Plea, that the Plaintiff had laid the Treſpaſs to be done on the Firſt of April 21 Car. 2. and the Defendant juſtified on the Firſt of Auguſt 20 Car. which varies from the Time in which the Treſpaſs was laid in the Declaration, whereas he ought to juſtify on that very Time; but it was adjudg'd, that the Plea was good in Subſtance, becauſe the Defendant had averr'd, that it is Eadem Tranſgreſſio of which the Plaintiff complained; and the Plaintiff having demurred generally to it, this is but Matter of Form, and not Subſtance, of which no Advantage can be taken upon a general Demurrer. And the Defendant had Judgment. 2 Saund. 4. Hill. 21 & 22 Car. 2. B. R. Mellor v. Walker.

21. Where one pleaded, that *Seiſitus fuit of an Houſe and* 20 *Acres of Land*, this, it was ſaid, muſt be intended of a Fee Simple; and when he afterwards ſays, *De Jure habere debuiſſet Common*, thoſe Words amount to a Preſcription. Arg. 4 Mod. 420. in the Caſe of **Strode v. Byrt.** cites Paſch. 33 Car. 2. B. R. Rot. 109. Brooking v. Bond.

22. The *Plaintiffs intitle themſelves to each of them a Mill*, and declare that they had uſed to repair the ſaid Mills, and *preſcribe*, *that all the Inhabitants* within the Manor had *uſed to grind omne Frumentum that they ſpent* &c. *at their Mills*, *or at the Mill of one of them.* Two Exceptions were taken on the Declaration by the Court; for as this Preſcription is alleg'd, poſſibly one of the Plaintiffs might have no Cauſe for Action; for if A. has an ancient Mill where the Inhabitants uſed to grind, and B. erects a new Mill in the ſame Town, it may be truly ſaid, that the Inhabitants are to grind at the Mills of A. and B. or the Mill of one of them, altho' they were not oblig'd at all to grind at the Mill of B. per Hale Ch. J. but to intitle them both it ought to be alleg'd, that all the Corn not ground at the Mill of A. uſed to be ground at the Mill of B. and that all the Corn not ground at the Mill of B. uſed to be ground at the Mill of A. and then both had been intitled. (2d Exception) They preſcribe to grind omne Frumentum ſpent in their Houſes, which is not good; for it may be, they ſpent Corn and never ground it all; as what they give their Pigs and Hens, and make Frumenty with, which they ſhall not be obliged to grind; but it ſhould have been ſaid, *Omnia Grana molienda*; and Twiſden cited **Ayliffe and Charleſworth's** Caſe; where the Preſcription was adjudg'd bad for this Point. Judgment for the Defendant. Freem. Rep 20. pl. 22. Mich. 1671. Harvey and Corydon v. Willoughby, in C. B.

23. A Man *hath an Acre* of Freehold *in a Great Field*, *to which Common doth belong*, now he cannot in his *Preſcription lay it*, that he hath Common in the whole Field, but *in ſuch a Part* of the Field, as in that *towards the Eaſt Part or Weſt Part of the Field*; becauſe, if otherwiſe, he ſhould then extend his Preſcription to his own Land, which would not be good; and becauſe he had here laid his Preſcription to the whole Field, he was nonſuited &c. Clayt. 19. pl. 32. Conyers v. Jackſon.

Freem. Rep. 210 cites Sir Miles **Corbet's** Caſe 7 Rep. 5. That a Man had Lands lying intermix'd in a Common Field, where he preſcrib'd for Common; and he laid his Preſcription *in all the Field except his own Lands.* The Court agreed that Caſe, and ſaid, That that Judgment was affirm'd for good Law in the Caſe between the **Lord Clare** and **Sir Thomas Williamſon**; which was the ſame Caſe.

34. In Treſpaſs for Breaking his Cloſe, and Fiſhing in his ſeveral Fiſhery; the Defendant, as to the Cloſe, pleaded that the Earl of Warwick was ſeiſed in Fee of the Manor of H. whereof one Acre covered with Water was Parcel and contiguous to the ſaid Cloſe, and ſo preſcribes *to have a neceſſary Eaſement to catch Fiſh in the ſaid Water*, *and* for that Purpoſe *to enter into the ſaid Cloſe and ſpread Nets* &c. That the

Earl granted this Manor and Cloſe to King E. 6. from whom it came to Queen Mary, who granted it to T. Lucy in Fee, with all Ways, Emoluments, Commodities and Hereditaments &c. and ſo derives a Title to himſelf from the ſaid T. Lucy, and juſtifies the Entry in his own Right &c. Upon Demurrer it was objected, That this Plea was ill, becauſe the Defendant has preſcribed for a neceſſary Eaſement, but *does not ſay that it was neceſſary for Catching Fiſh*; It was anſwered, That the Word *Eaſement* is known in Law, it *is a Genus* to ſeveral Species of Liberties, which one may have in the Soil of another, without claiming any Intereſt in the Land itſelf. And per Cur. it is a known Term in Law; But here the Thing itſelf is ſet forth, (viz.) to Catch Fiſh &c. and certainly no Inſtance can be given of a Preſcription for ſuch a Liberty, by ſuch a Word or Name; therefore a Rule was made to ſet the Preſcription right, and try the Merits. 4 Mod. 362. Mich. 6 W. & M. B. R. Peers v. Lucy.

25. *De Antiquo* in a Count is a Preſcription. Per Holt. Ch. J. Skin. 621. in the Caſe of Stroud v. Birt.

Allege Seiſin.

26. Where one intitles himſelf to a *Duty and Remedy* by Preſcription, he muſt *ſet out his Remedy wholly*; Indeed if you preſcribe to a *Duty*, you may have *Debt* for it without Preſcription, but you cannot *diſtrain* without it; And if you preſcribe for a Duty and Diſtreſs, you cannot by virtue thereof *ſell*, without a Preſcription for ſelling too; becauſe a Preſcription may be to diſtrain without ſelling. Per Holt. 12 Mod. 329.

It is a good Title *in Aſſiſe of Rent that the Plaintiff and all ſeiſed of the Manor of D. have been ſeiſed of the Rent time out of Mind, as Parcel of the Manor.* Per Hull quod Hank conceſſit. Br. Preſcription pl. 16. cites * 22 H. 4. 7.

27. A Man, *in Replevin*, preſcribed that the Plaintiff and his Anceſtors, and thoſe whoſe Eſtate he has, have had *Common* in his Land where &c. *and that the Plaintiff and his Anceſtors have uſed to pay* 10 *s. Rent per Ann.* to him and his Anceſtors *for the ſame Cimmon*, and ſo *avowed for* 10*s.* and good, Notwithſtanding that he *did not preſcribe that he and his Anceſtors &c. have had the Rent*, but that the other has paid it, and is all one, per Cur. quod nota, and this is not Rent, but Annuity; For he cannot have Aſſiſe; Becauſe he cannot have Rent out of his own Land, and yet a good Preſcription per Cur. But he *ought to allege Seiſin* per Cur. and ſo ſee Preſcription *to diſtrain in his own Land.* Br. Preſcription, pl. 1. cites 26 H. 8. 5.

* It ſhould be 12 H. 4. 8. pl. 13.

28. Action upon the Caſe, That whereas betwixt the Plaintiff's Houſe and the Defendant's, there was a little *Piece of Ground*, called a Twitchell, *upon which he, and all thoſe whoſe Eſtate he hath, had uſed to ſet their Ladders to repair their Houſe*, and *ſays, that he Poſſeſſionatus eſt* of the ſaid Houſe &c. and that the Defendant erected a Wall there, Per quod he could not ſet his Ladder; And per Curiam, the Plaintiff hath not well preſcribed, for he hath laid the Preſcription in himſelf, and thoſe whoſe Eſtate he hath, and ſays, that he *Poſſeſſionatus fuit*, which cannot be *intended but of a particular Eſtate*, as a Leaſe for Years, and a Leſſee ought not to preſcribe in his own Name: Rainsford ſaid If he had ſaid Seiſitus, it might have been well enough. Wylde ſaid, It muſt have been *Seiſitus in Feodo*, or elſe it might have been but an Eſtate for Life; But if he had laid it in the *Occupiers*, perhaps it might have been good, being but an *Eaſement*. Freem. Rep. 357. pl. 453. Mich. 1673. Matches v. Broughton.

2 Show. 195. pl. 196. Paſch. 34. Car. 2 B R. S. C. Stay'd till moved on the other Side. —— S. C. that Judgment was arreſted

29. Plaintiff declared, That he was ſeiſed of a Tenement, and that he and all thoſe whoſe &c. had uſed *to fetch Pot-Water* from the Defendant's Cloſe; Iſſue was taken upon the Preſcription; and found for the Plaintiff; But the Court held the Declaration was ill, becauſe the Plaintiff did *not ſet forth that he was ſeiſed in Fee*; For a Preſcription cannot be annexed to any thing but to an Eſtate in Fee; therefore this is a Defect in Subſtance, and not aided by a Verdict. And the Judgment was arreſted. 2 Mod. 318. Tr. 30 Car. 2. B. R. Scoble v. Skelton.

for

for not ſhewing How ſeiſed; For unleſs he was ſeiſed in Fee, he could not preſcribe. And upon being moved again by Tremain, the Court held their former Opinion. Skin. 36. pl. 3. Paſch 34. Car. 2. B. R.

30. In caſe the Plaintiff declared, That the Office of Poſt-maſter was an *ancient Office, to which ſeveral Fees were belonging* for carrying Letters; but did *not ſay* they had belonged *Time out of Mind*; And it was held well enough, for being alledged to be an antient Office, and that ſuch Fees did belong to it, he need not preſcribe for them. Latch. 87. Lord Stanhope, v. Ecqueſter.

Not ſaying Time out of Mind

31. One preſcribed, That all the *Occupiers* of B *Habuerunt & habere conſueverunt Common* in ſuch a Town in C. *Ratione Vicinagii*, but did *not allege Time out of Mind*; which the Court held to be ill, becauſe the Preſcription *is the Foundation for Common of Vicinage*; but 'tis *otherwiſe*, where a Man claims *Common Appendant*; for in ſuch Caſe the Plea would be * double, if the Defendant preſcribed to it. Latch. 161. Jenkins's Caſe.

* Orig. is (doubt)

32. Treſpaſs for taking and carrying away his Cheeſes, Defendant juſtified for that he was *ſeiſed* in Fee of Chipping Sudbury, and *of an ancient Market* there held every Thurſday, and that he and all thoſe whoſe Eſtates he hath, had *uſed to have a Penny for every Hundred of Cheeſe expoſed to Sale* in the Market, in the Name of the *Pitching Penny*; And upon Denial, to diſtrain &c. And that a Hundred of Cheeſe being expoſed to Sale, and 1 d. being demanded and not paid, he diſtrained. Upon Demurrer it was objected, That the Defendant had not made a ſufficient Title, not having laid an Uſage Time out of Mind, but only by Que Eſtate he hath, and the whole Court was of that Opinion. And Judgment for the Plaintiff. 2 Jo. 227. Mich. 34 Car. 2. B. R. Goodwin v. Brooks.

33. Caſe, and declared, That he was ſeiſed of ſuch Lands &c. And *that he and all thoſe*, whoſe Eſtate he had *Simul-cum quibuſdam aliis tenentibus*, Tenants by Copy of Court-Roll, *de Manerio in J. Time out of Mind have had ſolam Paſturam* in ſuch a Cloſe, and the Defendant had diſturbed him; and upon Demurrer, it was objected, to the Preſcription, that (cum aliis Tenentibus) is *uncertain*, both as to their Kind and Number; And that de Manerio in J. is uncertain alſo what Manor is intended, and every Manor has a Name, and there may be ſeveral Manors in one Vill; For which Reaſons the Court held the Declaration ill, and gave Judgment for the Defendant. 2. Lev. 178. Mich. 28 Car. 2. B. R. Underwood v. Saunders.

Uncertain.

34. The Declaration was, That he was *ſeiſed of a Meſſuage or Tenement, and that He and All &c. by Himſelf or Servants had fetched Water &c.* Exception was taken that Meſſuage (*Or*) Tenement is uncertain, and ſo (by himſelf or Servants) but Non Allocatur. Skin. 36. pl. 3. Paſch. 34 Car. 2. B. R. Scobell v. Skelton.

2 Show. 195. S. C. & S. P. as to Meſſuage (or) Tenement, was held well enough; Becauſe every Meſuage is a Tenement. And that the other Exception was, becauſe it was for *Him and his Servants*, whereas his Servants had no Eſtate; but held well enough.

35. In an Action for Toll, a Preſcription was laid *to have a Quart de quolibet Sacco*, Angl', a Sack of Corn, *for Toll*; and moved in Arreſt of Judgment, becauſe a *Sack* was a *Meaſure not known in Law*, and therefore it ought to have been explained, or otherwiſe it is uncertain; But Dolbyn ſaid, a Sack was a Meaſure very well known in that County, and was there as certain as a Buſhel; and ſo he and Jones diſallowed the Exception, Cæteris abſentibus. Freem. Rep. 483. pl. 662. Mich. 1680. Wincombe v. Colborne.

36. Caſe &c. wherein the Plaintiff *declared, That* the *Provoſt and Scholars of King's College* in Cambridge *were ſeiſed in Fee of a Meſſuage* in Granceſter in C. *and* 260 *Acres of arable* Land, lying *in the Common Fields of Granceſter* aforeſaid, and *that they, and all thoſe whoſe Eſtate* they had in the ſaid Tenements, have Time out of Mind &c. for themſelves, their Farmers

Farmers &c. *had Libertatem Faldagii of all Sheep* (except &c. going and *depaſturing on the Common Fields &* * *Territoria of Granceſter* upon the ſaid 160 Acres, and ſets forth a Title under the ſaid Provoſt &c. and *that the Defendant* did *put in* 200 *Sheep* into the ſaid Common Fields of G. *and depaſtured them* there for a certain Time, *but them*, in or upon the ſaid 160 Acres or any Part thereof, *Minime faldavit ſicut ipſe debuit, nec permiſit* ipſum *querentem habere Beneficium Faldagii earundem*, and ſhews how the Defendant was not within the Exception. The Court held the Declaration inſufficient, for the Uncertainty of the Word *Faldagium*; And if the Word did imply as the Plaintiff had inſiſted, it ſhould have been ſet forth, viz. That the Plaintiff had ſet up a Fold where the Sheep were to have been folded, he being to do the firſt Act; And *ſicut debuit* is not ſufficient here for the Obſcurity of the Word (Faldavit) ſo that it appears not to the Court what ought to have been done on the Defendant's Part; And to ſay, *Non permiſit* the Plaintiff *Habere Beneficium Faldagii* was not good, without ſhewing how he diſturbed him as 8 Co. in **Francis's Caſe.** But Nota that was upon Demurrer, but here it is *not ſaid Non permiſit* the Plaintiff *Habere Faldagium*, or *Non permiſit eum faldare*, but *Non habere Beneficium Faldagii*; So that it was not certain what was meant for the Sheep might be Folded, and yet he might be Deprived of the Benefit of the Foldage; And for theſe Reaſons the Judgment was ſtay'd by the Opinion of the whole Court. 2 Vent. 138. Hill. 1 W. & M. C. B. Dickman v. Allen.

* The Ch. J. ſaid here that the Preſcription is laid to have the Sheep going infra Communes Campos & Territoria de Granceſter, to be folded, and Territoria is a Word unknown in the Law, ſo no Certainty in the Preſcription. Ibid.

In whom.

37. In Treſpaſs, the *Defendant juſtify'd* in F. *becauſe he, and all his Predeceſſors, and all their Tenants at Will of the Manor of D. have had Common of Turbary in the Place where* &c. Time out of Mind, and no Preſcription. Per Cur. For the *Lord cannot preſcribe in himſelf and his Tenants at Will*; For Tenants at Will cannot preſcribe; *but* the Lord ſhall preſcribe *in himſelf and his Predeceſſors*, or his *Anceſtors, or thoſe whoſe Eſtate* &c. *for them and their Tenants at Will*; and this is well. Note the Diverſity. Br. Preſcription, pl. 3. cites 9 H. 6. 62.

Traverſe, ſee pl. 2. & 18.

38. Treſpaſs againſt *ſeveral, ſuppoſing the Treſpaſs to be done in B. and the Bailiff of C. demanded Conuſance of the Plea*, becauſe they and their Predeceſſors Time out of Mind have had Conuſance of Pleas in B. by which &c. and *the Title of the Preſcription traverſed.* 7 H. 6. 45. b. pl. 287.

Br. Preſcription, pl. 18. cites S. C. And ſays, [ſomewhat obſcurely] Quod miror; For it ſeems that a Man may *preſcribe to hold* Pleas, but *not to have Conuſance of Pleas*, but *ſhall ſhew Charter.*

39. In Treſpaſs, the Defendant preſcribed in *him and his Anceſtors, and in thoſe whoſe Eſtate he has in ſuch a Houſe and Land in D. to be Keeper of the Wood of D. taking yearly of every Commoner there* 12 *d.* The *Defendant pleaded Grant to him for a certain Time expired, and traverſed the Preſcription*, and well, tho' it was in Treſpaſs, and the Preſcription admitted in him and his Anceſtors, and in thoſe whoſe Eſtate, therefore it is not double, as it ſeems. Br. Preſcription, pl. 95. cites 11 H. 6. 2.

40. In Treſpaſs the *Defendant in Jure Uxoris preſcribed, that ſhe and her Anceſtor, whoſe Heir* &c. *have had Rent of* 20 *s. per Annum* Time out of Mind of the Premiſſes, *and that they have uſed to diſtrain for it* when it was Arrear, by which he took as Diſtreſs for ſo much Arrear. The *Plaintiff ſaid, that the Feme and her Anceſtors have not been ſeiſed* of this Rent *Time out of Mind*; Priſt; and the others econtra &c. and ſo ſee Preſcription *traverſed in Treſpaſs*, and yet this *goes to the Right*, but there are ſeveral Caſes of this in the Book of Entry of Pleas. Br. Preſcription, pl. 20. cites 19 H. 6. 34.

41. *Preſentment was, that the Prior of D. ought to ſcower ſuch a Way in D. by reaſon of his Land in D. and that he and his Predeceſſors* &c. *have uſed to ſcour it*, and it s not held double, and therefore the Defendant was compelled to *traverſe both* the Points; Quod Nota. Br. Double, pl. 106. cites 21 E. 4. 73.

42. Where

42. Where Preſcription is *alleged in a Rent or Common*, and the *other alleges Unity of Poſſeſſion* of the Rent or Common, and the Land out of which &c. this is a good Plea *without traverſing the Continuance of the Preſcription*; Per Huſſey. Br. Traverſe per &c. pl. 185. cites 5 H. 7. 11, 12.

43. In Treſpaſs Quare Clauſum fregit in C. the Defendant pleaded, that the Manor of C. is an ancient Manor, and that within the ſaid Manor is a Cuſtom, that *every Tenant haberet a Way* over the Place where &c. Upon which the Plaintiff demurr'd; and Judgment was given for the Plaintiff that the Plea is ill. Sid. 237. Hill. 16 & 17 Car. 2. B. R. Cornelius v. Taylor.

Ways.

44. In *Aſſiſe of Rent*, he who preſcribes in him and his Anceſtors, and in thoſe whoſe Eſtate he has, ought to ſhew Deed of the Rent; for *Que Eſtate cannot be of a Rent without Deed*, by which the *Plaintiff ſhewed Deed of Grant* of the Rent to his Anceſtor, *but* did *not* ſhew *Deed of Commencement of the Rent*, and therefore ill by the beſt Opinion; For a Man may preſcribe in him and his Anceſtors &c. without ſhewing Deed, but not in a Que Eſtate of a Thing which cannot be granted without Deed, unleſs he ſhews Deed thereof; *Contra of Acquittal* in him and thoſe whoſe Eſtate the Lord has in the Seigniory, or of *Common Appendant*, or Eſtovers appendant &c. there he may preſcribe by Que Eſtate without ſhewing Deed. Br. Preſcription, pl. 29. cites 24 E. 3. 23. 39.

Without ſhewing Deed.

S. P. Br. Preſcription, pl. 47. cites 22 Aſſ. 53.—*But a Man may preſcribe in Rent Parcel of or Appendant to a Manor without ſhewing Specialty.* Br. Preſcription, pl. 47.———*And in Rent reſerved for equality of Partition.* Br. Preſcription, pl. 47.——*And the Reaſon* why Rent may be preſcribed for without ſhewing Deed, where it is Parcel or Appendant to the Manor or Land, *is, becauſe the Manor or Land may paſs by Livery without Deed*, and then the Rent paſſes with it as annexed to it. Br. Preſcription, pl. 47. cites 22 Aſſ. 5.———Br. Monſtrans, pl. 91. cites S. C.——But Br. Preſcription, pl. 48. cites 23 Aſſ. 6. Contra that in *Aſſiſe of Rent* the *Plaintiff preſcribed in him and his Anceſtors, and in thoſe whoſe Eſtate his Anceſtors had Time out of Mind*, and it was adjudged a good Title without ſhewing Specialty of the Que Eſtate or otherwiſe, and the ſame Judgment affirmed in B. R. in Writ of Error. Br. Preſcription, pl. 48. cites 23 Aſſ. 6 ———Br. Monſtrans, pl. 94. cites S. C.

45. A Man cannot *preſcribe in him and his Predeceſſors, and in all thoſe whoſe Eſtate he has in a Hundred*, without ſhewing *Deed of the Que Eſtate*; Per Hill. Br. Preſcription, pl. 15. cites 11 H. 4. 15.

(Z) Equity.

1. THE Conſtable of the Caſtle of Glouceſter exhibited a Bill againſt a Brewer, ſetting forth, *that he and all his Predeceſſors* Conſtables &c. *have uſed to have* 12 *s. of every Brewer within the City* of Glouceſter, and that the Defendant refuſed to pay it. And Noy *demurred becauſe no Conſideration was laid* in the Bill, by which it might ariſe and commence. But the Bill was ruled by the Court to be good. Litt. R. 103. Trin. 4 Car. in the Exchequer. The Conſtable of the Caſtle of Glouceſter v. A Brewer.

2. The Lieutenant of the Tower of London exhibited a Bill as to certain *Wine claimed by him of every Ship laden with it*, and he was relieved. And it is ſufficient to maintain the Preſcription, that *it might have a lawful Commencement though now the Cauſe and Conſideration is not known.* For in many Caſes the Conſideration is tranſitory, as Payment of ſuch a Sum &c. Litt. R. 103.

3. It is a common Caſe in Chancery, where a Man has *uſed to have a Rent out of ſuch a Manor Time out of Mind, but knows not by whom* he has it, *or what Rent it is*, whether Rent-ſervice, Rent-charge &c. *or*

for what he has it, but only that he has uſed to have it, if it be detained, to ſue there for it: Per Walters. Litt. R. 103. in the Caſe of the Conſtable of the Caſtle of Glouceſter v. A Brewer.

For more of Preſcription in General, See **Chimin or Ways, Common, Cuſtom, Due Eſtate,** and other proper Titles.

Fol. 334.

[Preſentation,] Parſon, Patron.

(A) Vicarage. [*Who might create a Vicarage.*]

Watſ. Comp. Inc. 8vo. 344. cap. 17. —A Vicarage cannot be created without the Aſſent of the Patron; per Dodderidge. Roll. R. 464. Trin. 14 Jac. in Cam. Scacc. in Caſe of Colt v. Glover.

1. THE Ordinary **cannot create a Vicarage without the** Aſſent of the Patron. 16 E. 3. **Quare Impedit** 145. 5 E. 2. **Quare Impedit** 195. **per Paſt.** 16 E. 3. **Monſtrans de faits** 166. **per Paſt.**

2. **The** Parſon, Patron, and Ordinary, **may create a Vicarage** without the Aſſent of the King, **though the Vicar ſhall be a Corporation; For this is a Corporation by the Common Law. Contra.** 17 E. 3. 51. **Admitted.**

Watſ. Comp. Inc. 8vo. 345. cap. 17. ſays, If the Appropriation be duly made when the Church is full, he ſuppoſes a Vicarage may then be created, at leaſt if the Incumbent conſent; But not ſo as to bind or leſſen the Profits of the preſent Incumbent; However, it is clear, that the Patron and Ordinary alone may create a Vicarage. Cites 8 R 2. Annuity 53.

3. A Parſon appropriate and the Ordinary **might,** before the Statute of Diſſolutions, **create a Vicarage; For the Parſon was Parſon and Patron.** 8 R. 2. **Annuity** 53. 17 E. 3. 51.

Watſ. Comp. Inc. 8vo. 345. cap. 17.

4. **If a** Dean and Chapter, or other ſuch Corporation, as Nuns &c. had Parſons appropriate, **they might** with the Ordinary **create a Vicarage, though they themſelves had not the Cure of Souls. Com. Grendon.** 497.

5. In Time of Vacation, **the** Patron of the Parſonage and the Ordinary **may create a Vicarage.** 8 R. 2. **Annuity** 53. **per Belk.**

6. The Patron *by Lapſe*, tho' it be the King himſelf, is not ſufficient Patron to aſſent; for the Patron by Lapſe *has no Intereſt*, but a neceſſary Function to preſent one to ſerve the Cure. Per Hobart Ch. J. Mo. 903. pl. 1262. Mich. 10 Jac. in Caſe of Colt v. Glover.

* There is no Letter to this in Roll. and this Plea is there marked (6). Endowment ſhall not be of a Vicarage without *the Aſſent of the Patron*. Per Dodderidge J. Mo. 900. Mich. 10 Jac. C. B. in Caſe of Colt v. Glover. Cites 5 E. 2. Quare Impedit 165.

[B.] Vicarage. *Endowment.* [*By whom &c.*]

[1.] 40 E. 3. 28. **AN Endowment is pleaded to** be by Parſon and Ordinary.

* [C.] † Vicar. Endowment.

* There is no Letter to this in Roll.

1. IF a **Vicar** had uſed by Preſcription, **Time whereof Memory &c.** to have all Tithes **within the Pariſh**, (except Corn, **which the Parſon appropriate uſed to have**) viz. of Hay, and alſo **of** Hops, from the Time that they came into England, **ſcilicet, in the Time of** H. 8. **and of Woads**, (**which is a Dying Plant**) and now Rape-ſeed is ſown within the Pariſh, **there** never having been any ſuch Seed ſown there before, nor in England till of late Time, **yet the Vicar ſhall have Tithes of this Rape-ſeed, and not the Parſon appropriate, becauſe this is within the Preſcription, tho' it be** a New Thing, **for which he cannot preſcribe ſingly, inaſmuch as the Parſon is excluded of all, except Corn, and this is within the** general Preſcription to have all Tithes, except Corn. P. 7 Car. B. R. between

Reſolved per Curiam, upon Evidence at Bar in a Caſe which concerns the Parſon and Vicar of the Pariſh of in Kent, and that there was not any Difference as to this, between ſuch Endowment, which was ‡ granted of the other Part, and ſuch Preſcription; for the Preſcription preſumes an Endowment precedent.

† Vicar is he who hath that Spiritual Living called a Vicarage, being no other than a certain Part or Portion of a Parſonage, allowed to the Miniſter for his Maintenance, introduced at that Time when Impropriations

‡ Fol. 335.

firſt began, both which Livings, as they are commonly called the Church, ſo both ſuch as ſerve in them are called the Patron's Clerks. The Vicar is uſually appointed and allowed to ſerve the Cure, by * him who hath the Impropriation of the Parochial Tithes; for at the Original of ſuch Impropriations a certain Portion of the Parſonage was allotted and ſet apart from the reſt, to maintain the Vicar who was to ſerve the Cure; ſo that now the Prieſt of a Parochial Church, where the Predial Tithes are impropriated, is called the Vicar, h. e. Vice Rectoris. And it ſeems anciently they did ſometimes ſtile themſelves Perpetual Vicars, becauſe every Vicarage, Corporation-like, hath a conſtant Succeſſion. Godolph. Rep. 196. cap. 18. S. 1.——* S. P. Per Davenport Arg. Palm. 113. Mich. 18 Jac. B. R. in Britton and Ward's Caſe. cites Com. 497.——Vicar is but *he Qui gerit vicem Perſonæ*, to ſupply his Place in his Abſence. Per Popham Arg. Le. 182. Trin. 31 Eliz. B. R. in Caſe of Slug v. The Biſhop of Landaff.

Vicarages were not at Common Law in Churches appropriated, but they commenced in 20 H. 3. by the Conſtitution of Pope Othobon, which provided that from thenceforward in Churches appropriate, a Vicar ſhould be endowed under a Penalty, but at Common Law they were Removeable, and not Perpetual; and ſince this Conſtitution Vicars are Spiritual in their Inſtitution and Indowment, and not of Temporal Conuſance; Per Damport Arg. 2 Roll Rep. 98. in Caſe of Britton v. Ward.——S. P. Arg. 4 Mod. 184. in Caſe of Wharton v. Liſle.

At the Common Law no Juris Utrum lay for their Poſſeſſions, but their Poſſeſſions might be increaſed and decreaſed at the Will of the Ordinary. And there was no Endowments of Vicars till the 11th of King John. And no Quare Impedit lay for the Advowſon of a Vicarage till Weſt. 2. cap 5. Nor any Juris Utrum for the Poſſeſſions of a Vicar, till 44 E. 3. cap. 17. Arg. Palm. 113. Mich. 18 Jac. B. R. in Britton and Ward's Caſe.——But it was ſaid by Noy, Palm 114 that Vicarages were long Time before King John, and that in Oxfordſhire there are 4 Vicarages, which were much more ancient than his Time. And that in 4 *H.* 2. a Vicarage was *made by Alexander the 3d.*——But Cro. J. 518. Noy ſaid, that if the Beginning of Vicarages be known, it was 8th H. 3.——But Moreton J. ſaid that Vicars came in in the 17th Year of King John. Mod. R. 12. in Caſe of Clerk v. Heath.

2. **If a Vicar be endowed out of a Parſonge** of all * White Tithes growing **and renewing within the Pariſh,** upon all the Land of the Pariſh, **the Vicar ſhall not thereby have Tithes of the** Glebe **of the Parſon; for he himſelf is † excepted.**

* Minutis Decimis. Cro. El. 578. —† Orig. is (Exceptant.)

3. **If a Vicarage was endowed before Time of Memory out of a Parſonage** of all the White Tithes growing **and renewing within the Pariſh, upon all the Land of the ſaid Pariſh; the Vicar ſhall not now have Tithes of the** Land which at the Time of the Endowment was Parcel of the Glebe, but now ſever'd **from the Glebe, inaſmuch as at the Time of the Endowment this Land was exempted out of the Endowment. Trin. 38 El. B. R. between** *Blenco and Marſton.* **Reſolved, and Prohibition granted accordingly; and there by Cook**

—Upon Endowment of the Vicar, it was appointed that he ſhould have the *ſmall Tithes of all Lands in the Pariſh,*

it

yet he ſhall not have Tithes of the *Glebe of the Parſon*, becauſe Eccleſia Eccleſiæ Decimas ſolvere non debet. Mo. 910. pl. 1281. Trin. 38 Eliz. Blinco v. Marſton (Vicar.)——*But* if the *Parſon leaſes the Glebe*, the Vicar ſhall have Minutas Decimas of the Leſſee, and Leſſor ſhall have the great Tithes; but if the *Endowment has ſpecial Words*, that the Vicar ſhall have *Minutas Decimas of the Glebe*, then he ſhall have them; but then it ought to be Ancient Glebe at the Time of the Endowment. Mo 910. S. C.——Cro. Eliz. 479. pl. 10. Trin. 38 Eliz. S C. by Name of Blunco v. Marton. —Cro. E. 578. Mich. 39 & 40 Eliz. B. R. S. C. Blinco v. Barkſdale.—‡ Mo. 910. Cites it as the Caſe of Young and the Parſon of Foxley in Wiltſhire ——Cro. E. 479. cites S. C.

it is ſaid, that this was one ‡ *Young's* Caſe, Vicar of the Pariſh of *Hopton* in Wiltſhire, adjudged and Prohibition granted.

4. **If a** Compoſition **be** between Parſon and Vicar, **that the Parſon ſhall have** all Tithe Corn and Hay, and the Vicar all other Tithes, **and after the Pariſhioners** ſow certain arable Land with Saffron or &c. **the Parſon ſhall not have the Tithes of the Saffron, but the Vicar. Trin. 7 Ja. B. Per Coke ſaid to be adjudged.**

Cro. E. 467. (bis.) S. C.—Mo. 909. pl. 1277. S. C—Goldsb. 149. pl. 75. S. C—S C. Cited Hutt 78. as adjudged Paſch. 3 Jac in B. R. and ſays that the Field, planted with Saffron, contained 40 Acres. And in the principal Caſe there, which was **Uvedall v. Tindall** Hill. 1 Car. It was ſaid that all theſe New Things, as Saffron, Hops, Woad &c. if it does not appear by material Circumſtances to the contrary, ſhall be taken as Minutæ Decimæ; and accordingly Judgment in that Caſe was given for the Defendant.—Cro. C. 28. S. C. and there cites the principal Caſe of Bedingfield and Feake, by Name of **The Dean and Chapter of Norwich's Caſe** Paſch. 43 Eliz. adjudged.

5. **If the Vicar be endowed** De Minutis Decimis **by Preſcription, and afterwards** Land which had been Arable Time whereof Memory, is converted **from Arable, and there grow Minutæ Decimæ, the Vicar ſhall have them; for his Endowment does not go to the Land, but to the ſmall Tithes in any Place within the Pariſh. P. 38 El. B. R. between** *Beding field and Freake.*

A Vicar was endowed by theſe Words, (viz. *Habebit tertiam partem Decimarum Bladorum & Fœni, quomodocunque pervenientem de Maneriis de B.* &c. The Queſtion was, If by this Indowment the Vicar ſhould have the third Part of the Tithes growing upon the Land of the Freeholders within the Manor. The Court ſaid that a Manor cannot conſiſt without Freeholders, and ſince they are to be charg'd with the Payment of Tithes, one and the other together ſhall be ſaid to be the Tithes of the Manor: And ſo it was adjudged that the Vicar ſhould have Tithes of the third Part of the Land. Ow. 58. 59 Trin. 36 Eliz. Higham v. Beaſt.——Ow. 74. S. C. by Name of **Higham v. Beſt**; and Tanfield ſaid, That the Word Manor extends to the Precincts of the Manor, and not to the Demeſnes and Services only —S C. Cro. E. 462. (bis.) Paſch. 38 Eliz. B. R. **Higham v. Beſt.** Adjudged by Popham and Fenner, the other Juſtices not being in Court, That the Vicar ſhould have all the Tithes, as well of the Freeholders as of the Demeſnes; for this does not create a New Charge, but is diſpoſing of the Ancient, which was due by the Tenants, and runs thro' the Limits of the Manor; but if this had been made before the Council of Lateran, it would not have charg'd the Freeholders but the Demeſnes only; and adjudged accordingly for the Vicar.

6. **If a Vicar be endowed** of a third Part of all the Tithes growing and coming within the Manor of D. **he ſhall have the Tithes of the** Franktenants, **as well as of the Copyholders; for all make the Manor. P. 38 El. B. R. between** *Higham and Beſt* **adjudged.**

Cro. E. 633. S. C.—— Tho' Vi Termini *Tithe Hay* is not included in the Words *Decimis Garbarum* at this Day, yet for the *continual Uſage* it ſhall be taken that then they uſed this Word to ſuch Intent. Palm. 115.——

7. **If a Vicar was endowed** in Time of H. 3. **by the Parſon appropriate, among other Things** De Decimis Garbarum, **growing within a Hamlet within the Pariſh, and** always after **this Endowment,** the Vicar had uſed to have the Tithes as well of Hay as of Corn, **tho' now at this Day Garba ſignifies a Sheaf of Corn, and as the Civilians ſay** Garba ſignifies **ſuch Thing as is bound together by a Bond, and in their Books is uſed for Corn and not for Hay, yet becauſe it is an ancient Endowment, and the Uſage always after has been ſuch as is aforeſaid; the Vicar ſhall have Tithes of Hay; for it ſhall be** preſumed **that in the Time of H. 3. Hay might be compriz'd within the Word Garba, and that at this Time the Uſe was to bind Hay in Bundles; for ſuch ancient Grants are not to be expounded according to the Law uſed at this Day, but as may be intended that it was uſual at the Time of the Grant. Mich. 40. 41 El. B.** *Barkſdale v. Smith and Blinco* **adjudged.**

8. If

S.C. cited by Noy in Caſe of Britton v. Ward. 2 Roll. R. 161. cites Barſdale v. Smith.——Litt. R. 263. Anon.

8. If a Vicar be endowed De Minutis Decimis, and he has uſed by Force of this Endowment by a long Time to have Tithes of Wood, which is but of the annual Value of 6 s. 8 d. By Reaſon of the ſmall Value of the Wood and the Uſage, the Wood ſhall paſs by Words of Minutis Decimis. Mich. 10 Ja. B. R. between *Reynolds and Green* Per Curiam. Adjudged upon Evidence at the Bar, tho' Wood in its Nature be great Tithes.

2 Bulſt. 27. S. C. The Judges all agreed in this, That by the Words Alteragia & Minutæ Decimæ, by Uſage, Tithe Wood may well paſs; and ſo hath the Opinion of all the Civilians been. But per Williams J. by the Word Alteragia, without Uſage, it ſhall not; but if the Vicar Time out of Mind has uſed to have the ſame, then it is good, and ſhall paſs by the Words of Minutæ Decimæ. And per Fleming Ch. J. accordingly, the Tithe Wood being of ſmall Value; and that by thoſe Words Tithe Wood may paſs, tho' the Law be againſt it.——S. P. Het. 135. Wood v. Green.——Litt. R. 243. S.C.

9. Tho' the Tithes of a Field have been paid to a Parſon, yet it being *converted to another Uſe*, whereof no Great Tithes do come, the Vicar ſhall have the Tithes. And ſo if *arable* Land be converted *into an Orchard*, the Vicar ſhall have the Tithes of the Apples; and ſo if the Orchard be *changed* into Arable, the Parſon ſhall have Tithes. Per Popham, quod Fenner conceſſit. Owen 74. Paſch. 38 Eliz. B. R. Dean and Chapter of Norwich's Caſe.

10. A Vicar libell'd againſt the Parſon for *Tithes of the Glebe*. The Parſon brought Prohibition, and adjudged Maintainable. And if *ſpecial Cuſtom* be after the Endowment of the Vicarage, this is *iſſuable*. Mo. 457. pl. 627. Trin. 38 Eliz. Blenco v. Marſon.

11. The Parſon cannot *preſcribe* againſt the firſt Endowment. Noy 3. Trin. 2 Jac. B. R. Pringe v. Child.

Mo. 780. Paſch 4 Jac. S. C. And ſays an Injunction was granted the Vicar, to ſtay the Suit of the Parſon for the Tithes limited to the Vicar on the Compoſition.———Mo. 761. S C. by Name of Spring's Caſe.

12. A *Modus between the Parſon* and a Pariſhioner, will not diſcharge the Payment of Tithes as to the Vicar. 3 Bulſt. 221. Mich. 14 Jac. Wintel v. Child.

13. *As long as the Vicar occupies his Glebe Land in his own Hands, he ſhall pay no Tithes*, but if he demiſe it, the *Leſſee* ſhall pay Tithes to the Parſon that is impropriate. Brownl. 69. Harris v. Cotton.

If a Vicar be endowed with certain Glebe out of the Parſonage, the ſame Glebe ſo aſſign'd ſhall be diſcharged of Tithes of Corn, in Conſideration that the Vicar is bound to ſerve the Cure; but if a Parſon leaſes Parcel of his Glebe to another for Years, Life, or makes Feoffment in Fee, the Leſſees or Feoffees ſhall pay the Tithes, unleſs ſome Conſideration diſcharges them of Tithes. Per Manwood Ch B. Shute Baron, and Gerrard Attorney-General. Sav. 3. pl. 8. Mich. 22 & 23 Eliz. in the Exchequer Chamber. Vicar of Sturton v. Grieſley.

14. Vicar *ſows the Land and dies*; *his* Executor takes away the Corn, and ſets not forth the Tithe; the Parſon brought Debt on the 2d Ed. 6. and the Court ſeemed to incline it would lie. Brownl. 69. Harris v. Cotton.

15. On a Queſtion about a Piece of Land, parcel of the Glebe, it was offered in *Evidence that Indowment* was of this Church in *H. the IIId's Time*, and in that *No Land was mentioned*, but it was anſwered that always in thoſe Endowments Liberty was reſerved to increaſe the Maintenance of the Church; And it was urged farther, That No Land was in the Valuation of this Church in Time of H. 8. when the Churches were valued, but it was anſwered that Lands were not in thoſe Valuations, and Omiſſions alſo of many Particulars were, and the Vicarage Houſe in this Caſe was omitted, and yet never queſtioned but it did belong to the Vicarage. Clayt. 9. 8 Car. Coyne's Caſe.

16. The King cannot make a *Licence of Appropriation* without a Matter of Record, and it *ought to be with a Condition to endow a Vicar*, and the *Endowment may be by a diſtinct Inſtrument* from the Appropriation, ſo

that it be made at the ſame Time that the Appropriation was. Sty. 156. Mich. 1649. Per Cur. in a Trial on the Caſe of Cave v. Orby.

17. *Bill* for Vicarage Tithes in ſome Towns in Kent, and the Plaintiff *did not ſet forth how they became due* to him, *whether by Preſcription or Endowment*; And after an Anſwer, and Depoſitions taken, this was objected, at the Hearing the Cauſe; But the Exception was over-ruled, becauſe the Defendant, by his Anſwer, admits him to be Vicar, and that the Tithes in queſtion are his Due, but inſiſts only upon Payment and Satisfaction; Quod nota; For it has been often ruled contrary, it being the Ground and Foundation of the Plaintiff's Title; But the Bill was afterwards diſmiſſed upon the Merits with 40 s. Coſts. Hard. 130. Mich. 1658. in the Exchequer. Button v. Honey.

18. The Vicar of G. brought Bill for Tithes of the Manor of Uxbury and other Lands belonging to the impropriate Rectory of G.—C. demanded them for 8 Years laſt paſt, and ending in 1661. It appeared upon the Hearing, that ſeveral Vicars of G. his Predeceſſors had enjoy'd theſe Tithes; But an Endowment was now produced, dated 7 March 1362, made by Archbiſhop Iſlip, and preſerved in his Regiſter, by which it did *not appear that the Vicar was endowed with any Tithes of Corn or Grain, neither was* there any *Liberty* therein *reſerved* (as uſual) *to augment or diminiſh*; Whereupon it was inſiſted that the Vicar ought not to have theſe Tithes; But the Court held, That where the Vicars had took Tithes for a long Time he ſhall not be concluded by their not being expreſſed in the Endowment, and that it had been often ſo held and ruled; And that by ſuch *long Poſſeſſion it ſhall be preſumed*, that the Vicarage hath at ſome Time or other been augmented therewith; And the not reſerving ſuch Power is not material; For an Augmentation may have been notwithſtanding, with Aſſent of, or citing all Parties, but not without Notice or Citation. Hardr. 328. Trin. 15. Car. 2. in the Exchequer. Twiſſe v. Brazen-noſe College & al.

19. A Vicar *may pay Tithes*; As where an Abbot or other had a Portion of Tithes out of a Vicarage, which is now come to the Plaintiff. Lev. 141. Mich. 16 Car. 2 B. R. Wright v. Beal.

20. Vicar libell'd in the Spiritual Court for Tithe *Hops*. It was ſuggeſted for a Prohibition, that they *had paid Time out of Mind to the Parſon ſo much an Acre for all Tithe Hops*; But the Prohibition was denied; For no ſuch Compoſition could be Time out of Mind, Hops not being known in England till Q. Elizabeth's Time, when they were firſt brought out of Holland; But the Court ſaid, that perhaps the Vicarage was endowed Time out of Mind of the ſmall Tithes, of which Nature Hops were; and then the Preſcription of paying a Modus to the Parſon ſhall not take them from him; For *it ſhall be taken to have commenced ſince the Endowment*. Vent. 61. Hill. 21. & 22. Car. 2. B. R. Crouch v. Riſden.

Sid. 443. S. C. accordingly; and that Hops were but of late Time, notwithſtanding the Records cited by Lord Coke to the contrary. But it was ſaid, That if the Suggeſtion for the Prohibition had been to pay ſo much in Lieu of all ſmall Tithes Prohibition ſhould go; Becauſe Hops, Oade, and ſuch ſmall Things of new Invention are Minutæ Decimæ, but the Suggeſtion being not ſo, the Prohibition was denied.——— 2 Keb. 612. S. C.

21. The Tithe of *Clover Graſs* belongs to the Vicar who has the Tithe Hay, except only only ſuch Clover as was neceſſarily cut amongſt the Corn where it did grow. Cited by Gregory J. as adjudged in the Exchequer when he was Baron. Carth. 264. Hill. 4 W. & M. B. R. in the Caſe of Wharton v. Liſle.

22. If the *Endowmeut* of the Vicarage be *loſt*, the Tithes muſt be paid according to Cuſtom. Per Cur. 3 Salk. 379. Anon.

(D) Vicarage. Patron. *Who* ſhall be *Patron of Common Right.*

1. THE Parſon, and not the Patron of the Parſonage **of Common Right is Patron of the Vicarage; Becauſe it is derived out of the Parſonage. Dubitatur. 17 E. 3. 51. b. Contra 5. E. 2. Quare Impedit. 165. per Paſt.** *ſee alſo Magn. E. 2. title pleg. 155. which gives ſame case.* And it is upon this Account, That if a *Parſon* be Patron of a Vicarage, and *leaſes the Parſonage* to another, the *Patronage of the Vicarage ſhall paſs as Incident* thereunto. Watſ. Comp. Inc. 8vo. 107. cap. 7. cites 2 Roll. Abr. 59. And ſays, That upon the ſame Account the Rector of Common Right is ever Patron of the Vicarage, tho' by ſome Ordinance or Compoſition it may be appointed and ſettled otherwiſe.—— Wats. Comp. Inc. 8vo. 345. cites S. C. But ſays Quære, How one Perſon can be Parſon, viz. Appropriate, and another ſaid to be Patron of the Parſonage Appropriated, ſeeing, as is ſhewed, the Inheritance of the Advowſon of a Church appropriated muſt be in the ſpiritual Corporation, to whom the Appropriation is made; In which caſe it is clear, that the Parſon Appropriate, creating a Vicarage, is Patron thereof, and cites 17 E. 3. 51. and it is ſaid that a Parſon Appropriate is Patron of the Vicarage and cites 17. E. 3 51. b. 11 H 6. 18. b. As where an Abbot or Prior is Parſon Appropriate, cites 19 E. 2. Quare impedit. 178.

2. **If a** Parſon Appropriate **creates a Vicarage, he ſhall be Patron of it. 17 E. 3. 51. (He is Patron and Parſon)** Where *Appropriation* of a Benefice *is made, and Vicar endowed*, the *firſt Patron* ſhall be Patron of it, and not the Ordinary. Quod nota. Br. Preſentation, pl. 10. cites 50. E. 3. 25,

3. The Chuſing of a Vicar belongs de Jure to the Prieſt, viz. to the Parſon; But if the *Pariſhioners* can *preſcribe to elect him*, it then belongs to them. 2 Roll. R. 304. by Name of Code and Hulmed. [But that ſeems not to be the Name of the Caſe. It was in a Prohibition.]

3. It was denied by the Lord Chancellor, that the Parſon De Jure has the Nomination of the Curate, and more eſpecially where the *Parſon* is of *a Lay Fee*. Vern. 42. pl. 42. Paſch. 1682. Mallet v. Trigg. The Caſe was, A *Prebendary* had *demiſed for* 3 *Lives the Corps of his Prebend, which conſiſted of two Impropriations*, and ſo now by the Statute were become Lay-Fee; In the Leaſe were as General Words as was poſſible, and particularly that the ſaid Leſſee ſhould *find two Vicars* for the aforeſaid Impropriations, and pay to one ſo much, and to another ſo much; But the Lord Chancellor ſaid, That by finding, was *meant maintaining* only, and not electing or chuſing; and he ſaid there was a great Difference as to the Parſon's Right of naming or chuſing his Vicar, where the Parſon was of Lay Fee, and where he had a Cure of Souls; For in the later Caſe there was Reaſon he ſhould approve of the Man who was to act under him in ſo high a Truſt. And the Curate, that came in by Oppoſition to the Leſſee, was eſtabliſhed by the Lord Chancellor, and the Charity decreed to him. 1 Vern. 42 Paſch. 1682. Mallet v. Trigg. —— This Caſe came before the Chancellor, upon Exceptions to a Decree of the Commiſſioners of Charitable Uſes. One Exception was, That by the Statute of the 29th of this King, none but Eccleſiaſtical Perſons could augment poor Vicarages, ſo as to be eſtabliſhed as a Charitable Uſe within that Statute; And that the Leſſor, in this Caſe, who was only a Prebendary, was not within that Statute. Sed non allocatur. Ibid.

(E) Parſon. Vicar. Who *may be* Patron. [And of their being Appendant. pl. 5.] *case of 12. Hen. 3. in Fitzh. Abr. Graunte pl. 89.*

1. A Layman **may be Patron of a Vicarage. 11. H. 6. 19. Contra** 39. E. 3. 33. Watſ Comp. Inc. 8vo. 345, 346. cites S. C.

2. A Layman **may be Patron** of the Parſonage, and alſo of the Vicarage. 11. H. 6. 19. Watſ Comp. Inc. 8vo. 345, 346. cites S. C.

3. A Parſon appropriate **may be Patron of the Vicarage.** 11 H. 6. 18. b. 17 E. 3. 51. b. 39 E. 3. 33. **where Abbot or Prior is Parſon. 19 E. 2. Quare Impedit** 178. See (D) pl. 1.

4. The King **may be Patron of a Vicarage.** 11 H. 6. 18. b. Watſ. Comp. Inc. 8vo. 345 cites S. C.

5. The

3 Bulſ. 88. S. C —— Vicarage may be *appendant to a Manor*, and I have ſeen one ſo; But 5 R. 2. Quare Impedit is adjudged contra; per Coke. Roll. R. 237. Mich. 13 Jac. S. C.——Though the *Advowſon* of the Vicarage uſually *appertains* to the Parſonage, yet it is not of Neceſſity, and it may be appertaining *to a Manor*. Cro. J. 386 the King v. Biſhop Norwich, Cole, and Saker. ——Watſ. Comp. Inc. 8vo. 107, 108. cap. 7. S. P. and cites ſame Caſes, and Mo. 894. [pl. 1258] Mich. 16 Jac. that in this Caſe, though the Right of Appropriation be not extant, yet the Uſe of Preſenting Time out of Mind is a ſufficient Evidence of the Appendancy to the Manor &c. contrary to Common Right. Sir Geo. Shirley v. Underhill and Burſey.

5 **The Vicarage** may be appendant to a Manor by Preſcription, though of Common Right it appertains to the Parſonage; **For it might be granted over by the Parſon before Time of Memory, or by Compoſition. By Reports 13 Ja. between the** *King and Sacker*. **Adjudged. Mich. 14 Ja. B. between the** *Dean and Chapter of Exeter and Corniſh*. **Adjudged.**

(E. 2) Patron. *Who ſhall be ſaid* to be a Patron.

See (T)

For this is a Grant of the Patronage, and the Grantee ſhall have Qua. Imp upon it. Br Grants, pl. 121. cites 24 E. 3. 69.

1. IN Qua. Imp. if a Man grants to me *that I ſhall have the Nomination of a Clerk, and he will preſent* him to the Ordinary, there I am Patron; *e contra* where he grants to me *that I ſhall name two and he ſhall preſent one of them*, there he is Patron; for he has Election; Per the Juſtices; and a Grant of the Nomination, or of the Preſentation is all one; and per Littleton, a *Grant of the free Diſpoſition of the Church of* E. is a good Grant of the Preſentation. Br. Grants, pl. 101. cites 14 E. 4. 2.

——*He that names the Clerk* is Patron, aud not he who is to preſent him. Br. Quare Impedit, pl. 56. cites 4 H. 4. 10. 11. [but it is miſprinted, and ſhould be as in the other Editions, 14. H. 4.]

2. *Grantee of the next Preſentation* is Patron, Pro illa Vice. Br. Grants, pl. 112. cites 7 H. 4. 2.

(F) Vicar. Endowment. The *Intereſt of the Vicar* in the Things whereof he is Endowed.

In Raſtal this is 14 E. 3. Stat. 1. cap. 17. which enacted, That *Parſons, Vicars, Wardens of Chapels, and Provoſt Wardens, and Prieſts of perpetual Chanteries ſhall have their Writs of Juris Utrum of Lands and Tenements, Rents and Poſſeſſions, annexed and given perpetually in Alms to Vicarages, Chapels, or Chanteries, and recover by other Writs in their Caſe, as far forth as Parſons of Churches and Prebends.*

1. **BEfore the Statute of** 14 E. 3. cap. 16. a Vicar had not any Franktenement in the Glebe of the Vicarage.

2. For **he** could not have a Juris Utrum **for the Glebe of his Vicarage.** 9 E. 3. 50.

In Juris Utrum it was agreed, that *for Land between Parſon ane Vicar, of which the Vicar is endowed by the Ordinary*, Action did not lie at Common Law between them, but the Defendant might plead to the Juriſdiction in an Action brought againſt him by the Vicar, but of all other Lands the Vicar might implead the Parſon at Common Law, but not of the Endowment; for of that the *Franktenement remained in the Parſon*; for it is done only by the Ordinary by Aſſent of the Parſon, and therefore no Franktenement paſſed as it is ſaid there; and yet by Endowment of a Feme Ex aſſenſu Patris Franktenement paſſes, and ſome ſaid there, that a Vicar of his *Ancient Endowment* may have * Action at Common Law againſt the Parſon; quære; for Fynche ſaid, That in ancient Time it was the Opinion, that as Vicar ſhould not have Action againſt the Parſon at Common Law, But contra by him at this Day, which is the beſt Order as he ſaid. Quære. Br. Juriſdiction, pl. 5. cites 40 E. 3. 28.——Br Dean and Chapter. pl. 2. cites 40 E. 3. 27.——Br. Juris Utrum, pl. 2. cites S. C. ——Br. Precipe, pl. 26. cites S. C.——* S. P. Br. Precipe, pl. 28. cites 12 Aſſ. 4 14. But Brooke ſays, ſee now the Statute 14 *E. 3. cap.* 17. which gives Action to the Vicar.——Godolph. Rep. 197. cap. 18 S. 2. ſays, That now it ſeems the Freehold of the Glebe of the Vicarage is in the Vicar himſelf, and not in the Parſon; For that the Poſſeſſions of the Vicar and Parſon are ſevered, and each of them ſhall have ſeveral

Writs

Writs concerning their reſpective Rights, and ſhall not join in one Writ; And the Vicar ſhall have and maintain Juris Utrum againſt the Parſon, who is the Patron of the Glebe of the Vicarage for the ſame Glebe.

3. A Præcipe **could not be brought for the** Glebe **of the Vicarage againſt the Vicar without** Naming of the Parſon. 3 E. 3. 17. 6 E. 3. 50. He was not ſuch a Tenant of the Franktenement, againſt

whom the Land of the Vicarage might be demanded. Br. Deane &c. pl. 13. cites 8 Aſſ. 36. and that it was ſaid 9 Aſſ. 3. that the Vicar was *not Tenant of the Franktenement*, and ſo it ſeems that the Franktenement thereof was in the Parſon. Quod Nota bene.

4. **The Vicar ſhall have** Aid of the Parſon, Patron, and Ordinary. 9 E. 3. 8. b. See (H. 2) pl. 3.

5. The Plaintiff being inducted to a Parſonage, [Vicarage] the Defendant notwithſtanding *kept the Poſſeſſion by Force*, whereupon the Plaintiff [the Vicar] was forced to file his *Bill in Chancery*; but the Defendant *demurred, becauſe the Vicarage is his Freehold and Inheritance, and ſo properly determinable at Law*; yet the Demurrer was over-ruled. Toth. 171. cites 5 Jac. Webb v. Smart.

(G) *Parſon.* The * *Intereſt* of the Parſon *in* the *Church and Church-yard.*

Fol. 337. See (K.) pl. 3.—Church-yard.

1. **The Parſon may** leaſe **the Church and Church-yard** by Leaſe of the Parſonage. 8 H. 6. 9. **Admitted.** * The Parſon has a Right to

the Poſſeſſion of the Church and Glebe, having the Freehold in himſelf, and may receive the Profits, Tithes, Oblations, Obventions and Offerings to his own Uſe, without the Patron's or Ordinary's Conſent, who, without his Conſent and Agreement, can do nothing during his Incumbency to charge the Church or his Succeſſors; And not only is the Freehold of the Church in the Parſon, but he has alſo the Right of the Church-yard and Glebe in him, whereof if he be put out of Poſſeſſion or diſſeiſed, he may have an Aſſiſe, or if he be ejected he may have Treſpaſs, and ſo may the Vicar have againſt a Stranger, if he be diſſeiſed of the Church-yard, but not againſt the Parſon himſelf. For the Parſon ſhall have an Aſſiſe or Action of Treſpaſs of ſuch Things as are annexed to the Church or Glebe, or for cutting down of the Trees, or doing of Treſpaſs in the Church-yard or Glebe, the Right and Intereſt thereof being in the Parſon. But if the Bells in the Steeple, the Ornament of the Church, or the like be taken away, in that Caſe the Action does not belong to the Parſon, but to the Churchwardens. Notwithſtanding the Parſon's Right and Intereſt as aforeſaid, yet he cannot cut down the Trees growing in the Church-yard of his Pariſh, ſave for the Repair of the Church. Or if a mere Stranger cut them down, no Suit can be thereon in the Spiritual Court for Damages; For if Suit be there commenced in the Caſe for Damages, no Conſultation ſhall be. Nor can the Parſon have Actions for Seats in the Church taken away by a Stranger, becauſe they are not fixed to the Freehold; But the Churchwarden may have Action in that Caſe. Godolph. Rep. 186, 187. cap. 17. S. 3.

2. 8 H. 6. 9. **The** Leſſee at Will of the Parſon brought Treſpaſs of his Cloſe and Houſe broke, **which was of the Church and Church-yard, and admitted maintainable. (It ſeems by the Book that it was** for coming there not in Time of Service, **or ſuch like, but at another Time.)** Br. Dean and Chapter, pl. 7. cites S. C.—Br. Treſpaſs, pl. 121. cites S. C.

3. **If there be a** Parſon Appropriate of a Church, and **alſo** a Vicar endowed thereof, **the** Trees in the Church-yard **belong to the Vicar, and not to the Parſon; For it ſeems that the Vicar ought to** repair the Church, **and he who ought to repair the Church ſhall have the Trees. Dubitatur. Mich. 13 Ja. B. R.** *Bellamie's* **Caſe.** Roll. R. 255. S. C. and per Coke and Doderidge, a Parſon of Church cannot cut Trees

growing in the Church-yard, unleſs to repair the Church. But Coke cited a Statute, and ſaid, that in the End thereof it is ſaid, (after ſpeaking of cutting of Trees growing in the Church-yard for Reparation of the Church) Et ſi non Præcipimus, tamen Factum non Condemnamus.

4. Where there is a *perpetual Vicarage endowed*, and the Vicar *comes in by Admiſſion, Inſtitution and Induction, performs Divine Service, pays*

the Synodals and Procurations, and repairs the Chancel, it has been adjudged, that ſuch a Vicar ſhall have the Trees in the Church-yard. Arg. Vent. 15. Paſch. 21 Car. 2. B.R. in Caſe of Heath v. Prin.

(G. 2) *Actions.* *What* Actions *he may have* for Treſpaſs &c. done.

And he may have *Aſſe of his Rectory, Church-yard and Glebe,* againſt a Stranger who has not Colour, or who is a Tort-feiſor therein; For it is his Franktenement. Ibid.——*And* he ſhall have *Treſpaſs of taking his Tenths.* Ibid.

1. IF a Man *Ejects a Parſon without Colour*, he ſhall have Treſpaſs. Br. Dean and Chapter, pl. 12. cites 28 H. 6. 19. per Markham; Quod all the Juſtices conceſſit.

2. A Parſon may have *Juris utrum* after Recovery by Action tried againſt his Predeceſſor; and he may have *Ceſſavit*, *Writ of Eſcheat*, and *Quod permittat*. Br. Dean and Chapter, pl. 27. cites F. N. B. tit. Juris Utrum.

3. A Parſon ſhall *not* have *Ingreſſus ad terminum qui preteriit*, but Juris Utrum; for he has not properly Fee Simple, and this Writ of Entry ought to be brought only by him who has Fee Simple. But Writ of Entry ſur Diſſeiſin is otherwiſe. Br. Dean and Chapter, pl. 28. cites F. N. B. tit. Ingreſſus ad terminum.

See (H. 2)

(H) Parſon. Vicar. *Re-united. Enlarged.*

Ley. 14. S. C. — For if the Ordinary doth unite, annex, and conſolidate the Vicarage to the Rectory or Parſonage out of which it was endow'd, to be holden by the Corporation Spiritual, and his or their Succeſſors, that were Parſons of the appropriated Church, together with that wherewith it was endow'd, to his or their proper Uſe, ſo that the Appropriator ſhould have and take Care of the Souls which the Vicar had, and the Patron who is the Appropriator doth concur thereto, This is ſaid to be a Diſſolution and Reſtitution of the Vicarage to the Parſonage, and good, and *is not ſuch an Appropriation* of the Vicarage *as is made void by the Statute of* 4 *H.* 4 *cap.* 12. as was admitted by the Juſtices upon Reference out of the Court of Wards. Mich. 7 Jac. B. R. **Stafford's** Caſe. *But* then this Reſtitution *muſt be made upon the Reaſon, that the Appropriator is become Poor*, and doth want ſuch Reſtitution, 40 E. 3. 28. And ſuch Diſſolution and Reſtitution of the Vicarage may be as well *made when* ſuch Vicarage is *full, if it be ſaid, that it ſhall be after the* **Death of the Incumbent*, as when it is void; and ſuch Vicarages as were held from the Time that the Reſtitution was to take Effect by the reſpective Appropriators with the Parſonage, as one intire Church without any Vicar, until ſuch Time as they came to the Crown by the Diſſolution of the Monaſteries, cannot now be preſentable, but the King or his Patentees ſhall enjoy them as free as the Appropriators had or held the ſame; and *although* that *ſuch* like *Reſtitutions* or Unions *had been* any Way *defective at the Time* of the making the ſame; *yet being good in Reputation, the Statute of Diſſolution* of Monaſteries *hath fully ſettled them* in the Crown. Watſ. Comp. Inc. 8vo 349, 350. cap. 17. cites Ley. 14. Mich. 1609. Stafford's Caſe, and 4 E. 3. 27. and Cro. J. 517. in Britton and Wade's Caſe, and Cro. E. 873. Hill. 44 Eliz. Robinſon v. Bedle, and Palm. 113, 219. Mich. 18 Jac. Britton and Ward's Caſe. —— *But* there was a *Difference taken* (by Moubray) *when a Layman gives Land to* one that is *a Vicar, and when* the *Vicar is endowed by the Ordinary of the Parſon's Land* &c. For in the firſt Caſe, the Ordinary hath no Power to diſſolve the Vicarage as to the Land, tho' he hath in the other. Watſ. Comp. Inc. 8vo. 351. cap. 17. cites 4 E. 3. 27. See 20 E. 3. Annuity 32. 16 E. 3. Annuity 24. and 40 E. 3. 28. b. —— * S.P. *Or* after *Reſignation.* Br. Appropriation. pl. 2 cites 50 E 3. 26. —— If Parſon and Vicar are in one Church, and the Vicarage voids, and A. B. *preſents C. to it as Parſon*, this makes C. Parſon, and Writ lies againſt him accordingly. Br. Deane &c. pl. 24. cites 11 H. 6. 18.

1. **IF there be a Vicar and a Parſon appropriate**, the Ordinary and the Parſon appropriate may, in Time of Vacation of the Vicarage, Re-unite **the Vicarage to the Parſonage. M. 7 Ja. B. R.** *Stafford's* **Caſe upon Reference out of the Court of Wards. Admitted by the Juſtices.**

2. If

2. If there be a Parſonage appropriate in an Eccleſiaſtical Perſon, which never came to the King by the Statute of Monaſteries, and a Vicarage endowed there alſo, and the Parſon makes a Leaſe of the Parſonage for Lives, according to the Statute of 32 H. 8. the Vicar may well ſue in the Eccleſiaſtical Court againſt the Parſon and his Leſſee, who comes in by the Statute, for Addition of Maintenance, and the Ordinary may well compel them to increaſe his Maintenance; for, upon all Appropriations, ſuch Power to increaſe the Maintenance of the Vicar was reſerved to the Ordinary, and the Leſſee comes in ſubject to this Charge. Hill. 9 Car. B. R. between *Hitchcot* Plaintiff, and *Thornburrough* and *Hitchcot* Defendants; The Plaintiff being Vicar of the Pariſh of Preſhut in Comitatu Wilts, and Thornburrough Parſon, the Church being appropriated to the Maſter of the Choriſters in the Cathedral Church of Sarum, he being Maſter, and the other Defendant being his Leſſee. And upon ſuch Suit againſt the Defendants by the Vicar in the Eccleſiaſtical Court, a Prohibition denied being moved by Maſter Maſon.

When the Rectory is in the Hands of a *Lay Impropriator*, the Ordinary can't *diſſolve the Vicarage* or *Augment* it. 2 Vent. 35. cites 2 Cro. 518 Parry v. Bankes. And 2 Roll. 339. —— There ſeems to be a Difference where a Vicar ſues a *Lay Impropriator*, and where the Impropriator is a *Spiritual* Perſon; for in the laſt Caſe, 'tisprobable he may ſue for an Augmentation; and in ſome Caſes where the Impropriation is not a Lay Fee, as in the Caſe of the *Choriſters of Salisbury*, where the Appropriation of a Parſonage was made to them before the Statute, and continues ſo ſtill; and in ſuch Caſe, the Biſhop may make an Augmentation if that Power is reſerv'd; for the Perſons are ſubject to his Command. 3 Salk. 378. Lutten v. King.

3. If *an Advowſon* be *appropriated to the Abbot*, and *A. B. brings Writ of Right of Advowſon by elder Title than the Appropriation is, and recovers* the Advowſon of the Parſonage, where a *Vicar* is *endow'd*, there, he ſhall recover both the Vicarage and the Parſonage. Br. Judgment. pl. 138. cites 16 E. 3. And Fitzh. Grants 56.

Brook ſays, The Reaſon ſeems to be inaſmuch as *before the Appropriation there was no Vicarage*, for the Vicar was made and endow'd when the Appropriation was made; and by *Recovery by elder Title than the Appropriation* was, it is now made a Parſonage again alone, and the *Vicarage diſſolved by this Judgment*. Br. Judgment. pl. 138.

4. In Treſpaſs for taking certain Loads of Wood ſet out for Tithes, the Defendant pleaded Not Guilty. The Plaintiff for Evidence ſhew'd, that in the Time of King E. 3. the Rectory was impropriated, and the Vicarage then endow'd; and (inter alia) the Tithes of Wood were allotted to the Vicar. The Defendant ſhews, that *for* 160 *Years laſt* paſt *there had not been any Vicar preſented there*, until the Plaintiff obtained a Preſentation from the Queen by Colour of Lapſe; And ſo pretended, that in regard it had continued ſo long in this Manner, that it re-united again to the Rectory. But the Court informed the Jury, that altho' a Vicarage is always taken out of the Parſonage, and for the Neceſſity thereof may be re-united to ſupply the Parſonage, *yet*, by Continuance of Time in not preſenting a Vicar, which is the Default of the Parſon himſelf, *it ought not to be adjudged* to be *a Diſcontinuance of the Vicarage*, *but ſomewhat ought to be ſhewn of the re-uniting* thereof; Wherefore, by the Court's Direction, the Jury found for the Plaintiff. Cro. E. 873. Hill. 44 Eliz. C. B. Robinſon Vicar of the Church of Kimbolton v. Bedel.

Watſ. Comp. Inc. 8vo. 350. cap. 17. cites S. C. ——

5. A Parſonage was appropriated to the Deanry of St. A. in 24 H. 8. and a Vicarage endow'd; and afterwards the Biſhop, in 24 Eliz. diſſolved the Vicarage, and Parry pretending that this Vicarage was not diſſolved, but that it was in the King's Hands by Lapſe, obtained a Preſentation. And 'twas reſolved by the Barons of the Exchequer, that *after the Statute of* 31 *H.* 8. *which made Parſonages Lay-Fees, the Ordinary may not diſſolve the Vicarage when the Parſonage is in a Temporal Hand*, for that ſhould be to deſtroy the Cure. But being in this Caſe *appropriated to the Dean of St. A.* it ſo remaining in his Hands may very well be diſſolved. And according thereto was the Opinion of Doderidge J. Cro.

S. C. cited Godolph. Rep. 197. cap. 18. S. 2. — S. C. cited 2 Vent. 35. — S. C. cited Watſ. Comp. Inc. 8vo. 351. cap. 17.

J. Cro. J. 518. Mich. 16 Jac. B. R. in the Caſe of **Britton v. Wade** cites it as the Caſe of Parry v. Banks.

S. C. 2 Roll. Rep. 127. Mich. 17. Jac. B. R. And the Court declar'd their Opinions, That the Statutes of 15 R. 2. and 4 H. 4. do not extend to Appropriations made afterwards; for the Words of

6. The Prior of D. was *ſeiſed of the Advowſon* of N. appropriated to his Priory, *and alſo of the Vicarage of N. endow'd with the Altarage and ſmall Tithes.* The Appropriation and Endowment were *both in the Time of King John*, and continued 'till the Time of Hen. 6. when the Pope, in regard the Priory was poor, granted by his *Bull*, *that the Prior ſhould appoint one of his Monks to officiate the Cure, who ſhould be removable ad Nutum Prioris.* The Queſtion was, Whether the Vicarage was diſſolv'd? Reſolv'd, That a Vicarage perpetual could not be diſſolv'd after the Statute of 4 H. 4. and that the Pope could not make any Ordinance againſt that Statute which was in the Affirmative, and cited 11 H. 4. that the Pope cannot diſpenſe by his Bulls with the Temporal Law, tho' they tend In Ordine ad Spiritualia; and there were no Words that amount to a Diſſolution, but the Words only are, that the Vicar ſhould be Ad Nutum Prioris. Cro. J. 515. Mich. 16 Jac. B. R. Britton v. Wade.

the Statute are in the future Tenſe (That from henceforth &c.) and further they held, that the Inſtrument of the Pope had diſſolved the Vicarage; for the conſtant Uſage and Reputation ſubſequent (which are the beſt Expoſitors of the Act) declare the Validity, Intention and Force of the Inſtrument made by the Pope, viz. That it amounts to a Diſſolution; And Mountague Ch. J. founded a 2d Reaſon thereupon, For inaſmuch as always after 29 H. 6. 'till 31 H. 8. it remained in Reputation to be an Impropriation without Vicarage, becauſe the Statute of 31 H. 8. gave it to the King in the ſame Manner as then it was; And all the Juſtices ſaid, that great Inconveniencies would follow, if ſuch *ſleeping Vicarages* ſhould revive after ſo long a Time; for there are ſeveral Impropriations in England, for which Men have given valuable Conſiderations to the King, diſcharged of Vicarages. But Doderidge and Haughton J. held, that admitting the Impropriation had been within the Statute of 15 R. 2. and 4 H. 4. then the Biſhop is reſtrain'd and the Pope alſo from diſſolving the Vicarage, for otherwiſe the ſaid Statutes might be eaſily eluded; for when the Impropriations are made, and the Vicarage endow'd, according to the Words of the Statute, the Biſhop will immediately diſſolve it, which would be contrary to the Intent of the Statute. —— Godolph. Rep. 202. cap. 18. S. 17. cites S. C. that the Vicarage was not diſſolv'd. ——— S. C. cited Watſ. Comp. Inc. 8vo. 350. cap. 17. And ſays, that the Words are not ſufficient to make a Diſſolution, nor do amount to ſuch; nor do they ſo much as give the Prior Power to take the Profits.

See (H) * There is no Letter to this in Roll.

* (H. 2) Parſon. Vicar.

Br. Dean &c. pl 25. cites S. C. by Hengſton and Yelverton. —— Godolp. Rep. 199. cap. 18. S. 11. cites S. C. ——— Watſ. Comp Inc. 8vo 357. cap. 17. cites S. C. and 40 E. 3. 28. [Infra pl. 7, 8.] But this now to be underſtood of a Parſonage in an Eccleſiaſtical Perſon, which never came to the King by the Statute of Monaſteries; and if the Parſon hath made a Leaſe for Lives, according to the Statute 32 H. 8. the Vicar may well ſue in the Eccleſiaſtical Court againſt the Perſon and his Leſſee that comes in by the Statute for Addition of Maintenance; and the Ordinary may compel them to increaſe his Maintenance; for upon all Appropriations ſuch Power of increaſing the Maintenance of the Vicar was reſerved to the Ordinary by the Common Law. March. 87. 3 E. 2. 74. ——— Mar. 87. pl. 140 ſays, That this Power Augendi vel Minuendi was for the general Cure of Souls.

1. **If the** Vicarage be diminiſhed, **it ſhall** have more of the Parſonage, **if the Remnant be not ſufficient.** 31 H. 6. 14.

2. **If the** Parſonage be impoveriſhed **and ſo much decay'd** that the Parſonage **by itſelf,** nor the Vicarage, have ſufficient to ſuſtain them, **then the Vicarage ſhall be determined and** reſtored to the Parſonage; **and the Doctors agreed thereto.** 31 H. 6. 14.

Fol. 338.

3. **If a** Charge be ariſing upon the Vicarage, **it ſhall be** recompenſed out of the Parſonage. 31 H. 6. 14.

For being originally endowed out of the Parſonage, the Vicar was to have Aid of the Parſon if he were impleaded for any Thing touching the Vicarage, and the Parſon was ſubject to every Charge of the Vicarage. Godolp. Rep. 197. cap. 18. S. 2. cites 31 H. 6. 13. by Yelverton.

See pl. 10. in the Notes.

4. **If a** Parſon appropriate, who is Patron **of the Vicarage of the ſame Church,** by Agreement between him and the Ordinary, preſents the

the Vicar **to the Parſonage, this** unites **the Parſonage and Vicarage together.** 44 E. 3. 33. b. **Admitted** 44 Aſſ. 37. Godolph. Rep 199. cap. 18. S. 11.

cites S. C.—Watſ. Comp. Inc. 351. 8vo. cap. 17. cites S. C. And ſays, So that the Preſentee ſhall have all the Tithes and Profits of the Church.

5. But **if the** Leſſee of the Parſonage preſents **the Vicar to the Parſonage, this union ſhall not bind the Leſſor.** 44 E. 3. 33. b. 44 Aſſ. 37.

6. **And if they** are united **the** Endowment is come to the Parſon again. 20 E. 4. 6. b.

7. **If the** Parſonage **become** much impoveriſhed, **the Ordinary may ordain, that the Parſon ſhall be** reſtored to that whereof he endow'd the Vicar. 40 E. 3. 28. b.

8. But **he cannot do this,** unleſs for the Poverty of the Parſonage. 40 E. 3. 28. But it was ſaid by Compton Doctor of the Civil Law, That Union made upon a ſuppoſed and pretended Poverty, which appears to be falſe, is void. Cro E. 501. Mich. 38 & 39 Eliz. B. R. in Caſe of Auſtin v Twine.

9. But if Stranger gives Land to the Vicar **and his Succeſſors, the Ordinary cannot meddle therewith.** 40 E. 3. 28. b. Br. Juris Utrum, pl. 2. cites S. C. Per Mombray.

10. **If an** Abbot, being a Parſon appropriate, be Patron **of the Vicarage,** and preſents **to the Vicarage** by Name of a Parſonage, **this** diſappropriates **the Parſonage, and makes it and the Vicarage but one Parſonage, and** reunites **them.** 11 H. 6. 18. b. 3. Godolph. Rep. 199. cap. 18. S. 11. cites S. C.— Br. Annuity, pl. 44. cites

S. C.—— Watſ. Comp. Inc. 351. cap 17. ſays this is a Diſappropriation of the Church, tho' there be *no precedent Agreement* between the Parſon and the Ordinary to that Purpoſe, and it ſhall be preſentable after. Cites 44 E. 3. 33. b.

11. **If a** Patron of a Vicarage, another being Patron of the Parſonage, preſents thereto by Name of a Parſonage, **and his Clerk** inducted, **yet it continues a Vicarage. Dubitatur.** 11 H. 6. 19. 32. b. Br. Annuity pl. 44. cites S. C.

12. The ſame **Law, if the** King preſents by ſuch Name **to ſuch Vicarage. Dubitatur.** 11 H. 6. 18. b. Br. Annuity, pl. 44. cites S. C.

13. **If there be a** Vicarage and Parſonage (and both are void) and one preſents his Clerk as Parſon, **and he is ſo** inducted, **this ſhall** unite **the Parſonage and Vicarage again.** 11 H. 6. 33. All Appropriations are Preternatural, and the Church during ſuch Time is in Bondage; and therefore by Preſentation is made Preſentative. Per Windham J. Keb. 906. pl. 8. Trin. 17 Car 2. B. R. in Caſe of Wilkinſon v. Richardſon.——Watſ. Comp. Inc. 8vo 352. cites S. C. and ſays, It appears by this, that a *Layman* having an Appropriation, may diſappropriate it by Preſentation, if he be Patron of the Vicarage of the ſame Church, as well as an Eccleſiaſtical Perſon may, if Inſtitution and Induction be had upon it; and it is even ſaid, that ſuch Patron by his Act of Preſenting only to the Vicarage by the Name of a Parſonage, does diſappropriate the Church, and unite the Parſonage and Vicarage into one; and cites 11 H. 6. 18. b. 3. 38 H. 6. 20. F. N. B 35.——And therefore Hobart ſays he is of Opinion, that if Parſon appropriate *preſents, and his Clerk is refuſed for juſt Cauſe, and Notice given,* Lapſe ſhall incur; for the Appropriation gives him a Choice [The Word in Hob. is (Charge)] to hold or not, as appears by the Form of an Appropriation in Grendon's Caſe, which by his Preſentment he has renounc'd. Hob. 152. in Caſe of Colt and Glover v Biſhop of Coventry &c But Watſon makes a Quære whether a Diſappropriation be perfected by Preſentment, before Inſtitution and Induction had thereupon?

14. **If a** Parſon appropriate creates a Vicarage, and after the Advowſon **of the Church** is recovered by Writ of Right; **the Vicarage is defeated thereby, becauſe the Plaintiff recovers of a higher Right than the making of the Vicarage.** 17 E. 3. 51. b. 76.

15. But **otherwiſe it is, if he** recovers of a later Right **than the Creation of the Vicarage.** 17 E. 3.

16. *If Vicar* be *of the Dowment of the Ordinary and Patron*, all the *Frankt enement is in the Parſon*; and otherwiſe in the Vicar, if it be by other Title. Br. Dean and Chapter, pl 34 cites 40 E. 3. 27.

17. 15 *R.* 2. *cap.* 6. Enacts that *in every Licence made in Chancery of the Appropriation of any Church, this ſhall be contained (viz. That the Dioceſan ſhall ordain (according to the Value of ſuch Churches) a convenient Sum to be yearly diſtributed out of the Profits thereof, to the Poor of the Pariſh, by the Appropriators and their Succeſſors for ever; and alſo that the Vicar ſhall be ſufficiently endowed.*

See (H.) pl. 6.——Tho' the Statutes 15 R. 2. and 4 H. 4. ſay that there muſt be a Vicarage endowed upon every Appropriation, yet they do not extend to Appropriations Prior to the making the ſaid Acts. Arg. Gibb. 251 Paſch. 4 Geo. 2. in Caſe of the Biſhop of London and Lewen v. the Mercers Company.

18. 4 *H.* 4. *cap.* 12. Enacts that *the Statute of* 15 *R.* 2. 6. *ſhall be duly executed, and Appropriations made ſince that Statute contrary thereunto, ſhall* be *reformed before Eaſter, or elſe to be void, except Haddenham in the Iſle of Ely.*

All Vicarages annexed or appropriated ſince 1 *R.* 2. *ſhall be void.*

In every Church ſo appropriate, a Secular Perſon ſhall be ordained Vicar, Canonically inſtituted and inducted in the ſame, and conveniently endowed (by the Diſcretion of the Ordinary) to do Divine Service, inform the People, and keep Hoſpitality there, (except Haddenham aforeſaid) and no Religious ſhall be hereafter made Vicar in any Church ſo appropriate.

19. If Vicarage be Erected and Eſtabliſh'd, if *No Endowment* be *De Facto* of the Vicarage, the Vicar can't claim any Thing. Per tot. Cur. Palm. 426. Paſch. 2 Car. B. R. Cope v. Bedford.

20. A Vicar *cannot have* Tithes but by Gift, Compoſition or Preſcription; for all Tithes De Jure do appertain to the Parſon. Mar. 11. pl. 29. Paſch. 15 Car. Anon.

S. C. Sid 447. but there it is ſaid to be for Tithe Wood and Tithe Would or Woad

21. A Vicar libell'd for *Tithe of Wood*; the Defendant ſuggeſted for a Prohibition, that Time out of Mind they had paid no ſmall Tithes to the Vicar, but that by the Cuſtom of the Pariſh they were paid to the Parſon. Per Twiſden, If the *Endowment* of the Vicarage is *loſt*, ſmall Tithes muſt be paid according to Preſcription. Mod. 50. Hill. 21 & 22 Car. 2. B. R. Tildale v. Walter.

(which is a Dye-Stuffe) and that as to the Woad it was ſuggeſted that the Tithe thereof belonged to the Parſon and not to the Vicar; but this was doubted of, becauſe it is reckon'd among ſmall Tithes, like Hops &c.

22. Libel for Tithes by a Parſon, the Defendant ſuggeſted for a Prohibition a *Modus to the Vicar*, and that the *Vicarage* had been *endowed Time out of Mind*; and it was granted. Vent. 107. Hill. 22 & 23 Car. 2. B. R. Robſon's Caſe.

23. 29 *Car.* 2. *cap.* 8. *Sect.* 2. Enacts, That *Every Augmentation, reſerved, or agreed to be made payable ſince the firſt of June, in the* 12*th Year of his Majeſty's Reign, or which ſhall be made payable to any Vicar or Curate, or reſerv'd by way of Increaſe of Rent to the Leſſors, but intended for the Benefit of any Vicar or Curate, by any Archbiſhop, Biſhop, or any other Eccleſiaſtical Perſons out of any Rectory impropriate, or Portion of Tithes, ſhall continue for ever, as well during the Continuance of the Eſtate, upon which the Augmentations were reſerved, as afterwards; and the ſaid Rectories, or Portion of Tithes, ſhall be chargeable therewith, whether the ſame be reſerved again or not, and the ſaid Vicars and Curates are hereby adjudged to be in the actual Poſſeſſion thereof for the Uſe of themſelves and their Succeſſors; And ſhall have Remedy for the ſame either by Diſtreſs upon the Rectories impropriate, or Portions of Tithes, or by Action of Debt againſt that Perſon who ought to have paid the ſame.*

Provided that no future Augmentation be confirmed by this Act, which ſhall exceed one Moiety of the yearly Value of the Rectory Impropriate.

Every

Every Archbiſhop, Biſhop, Dean and Chapter, ſhall cauſe every Leaſe or Grant, whereon any ſuch Augmentation is made, to be entered in a Book of Parchment, to be kept by their Regiſters; And every Dean, or other Eccleſiaſtical Perſon, ſhall cauſe every Leaſe or Grant, whereon any ſuch Augmentation had been made by himſelf or his Predeceſſors, to be entered in the ſaid Book, which Entry being examined by the Archbiſhop, Biſhop, or Dean, and atteſted in the Book to be a True Copy of the Original Leaſe or Grant, and that the Augmentation in the ſame was intended for ſuch Uſe, ſhall be as a Record, a Copy whereof proved by Witneſſes ſhall be Evidence in Law, whereupon the Vicars and Curates may recover the Benefit of ſuch Augmentation.

Where any Archbiſhop, Biſhop, or other Eccleſiaſtical Perſon, upon the renewing or granting any Leaſe, have made any Agreement for an Augmentation for the Vicar or Curate, and ſuch Augmentation hath for any Time been paid, altho' the Agreement is not mentioned in the Leaſe, ſuch Eccleſiaſtical Perſon ſhall cauſe the Subſtance of ſuch Agreement to be entered in the Book.

Such Augmentation ſo entered ſhall likewiſe continue for ever in the ſame Manner, as if the ſame had been reſerved by the Leaſe.

If any Queſtion ariſe concerning any thing in this Act, ſuch favourable Conſtructions, and ſuch farther Remedy, ſhall be had for the Benefit of the Vicars and Curates, as may be had upon the Statutes for Charitable Uſes.

If upon the Surrender or Determination of any Leaſe, wherein any ſuch Augmentation hath been granted, any new Leaſe of the Premiſſes ſhall be made without expreſs Continuance of the Augmentation, ſuch new Leaſe ſhall be void.

24 Where the Vicar is endowed, and comes in by *Inſtitution and Induction*, he hath Curam Animarum Actualiter, and is not to be *removed* at the Pleaſure of the Rector, who in this Caſe hath only Curam Animarum Habitualiter; but vice verſa, the Rector has Curam Animarum Actualiter, and may remove the Vicar at Pleaſure. 3 Salk. 378. Smith v. Waller.

(I) Parſon, Patron, and Ordinary. Their *Power jointly in the Time of the Parſon.*

1. **Parſon Patron and Ordinary may** create a Vicarage 8 **R. 2. Annuity. 53.**

2. The *Patron and Ordinary* may *charge the Church*, in Time of Vacation for ever *with an Annuity*, or ſuch like. Br. Charge. pl. 38. cites 8 E. 3. 26. & Fitz. Releaſe 57.

And the Parſon may charge with Aſſent of the Patron and Ordinary. Br. Charge. pl. 38. cites Littleton, Diſcontinuance.

3. If a Parſon, Patron, and Ordinary *grant Land to J S. diſcharged of Tithes* he ſhall hold it diſcharged. Per Doderidge J. Cro. J. 453. Mich. 15 Jac. B. R. in the Caſe of Doubitoſte v. Curteene.

1 Rep. 44 a. in the Biſhop of Wincheſter's Caſe. Hob. 297. per Hobert Ch. J. in the Caſe of Slade v. Drake.

(K) Patron and Ordinary in Time of the Parſon. Their Power in Time of the Parſon *ſeverally*. Patron.

Fol. 339.

1. **If a Man** recovers an Annuity againſt a Parſon, and **after** releaſes to the Patron **during the Time of this Parſon, this ſhall extinguiſh the Annuity. 8. H. 6. 23. b. there it is put generally ſo. 41. E. 3. 20.**

See (L) pl. 10.

20. without mention whether it was in Time of the Parſon, or in Vacation; But the Scire facias is brought againſt the Succeſſor. Quære this.

2. During the Time of the Parſon the Patron has not any Reverſion in the Glebe. 8. H. 6. 24. b.

3. In time of the Parſon the Patron has nothing to do in the Church. 11. H. 6. 4. b.

Godolph. Rep. 191 cap. 17 S. 12 cites S. C.

4. If the Patron grants a Rent by Fine out of the Church it being full, and after the Incumbent dies this Charge ſhall not bind the Succeſſor; Becauſe the Parſon and Ordinary were not Parties thereto. 38. E. 3. 4.

5. If the Patron grants a Rent out of the Church it is void againſt himſelf; Becauſe he has nothing in the Church. 38. E. 3. 4. b.

* Fitzh. Abr. pl. 103. cites H 33. E. 3. but I find no ſuch Year in the Year Books.

6. If there be a Dean of the Free Chapel of the King of the Collation of the King, and he has an Advowſon appropriate to him, another who has Right to the Patronage of the Advowſon may releaſe all his Right to the King, and this ſhall be good Releaſe in the Patronage of the King. 33. E. 3.* Aid of the King 103.

7. In Scire facias upon a Fine, it was agreed per Knivet and Kirton, That a *Fine* levied *by the Patron alone of a Rent out of the* Land of the *Glebe* without the Parſon, is not good to bind the Parſon, and this ſeems to be *where a Parſon was at the Time of the Charge.* Br. Charge. pl. 11. cites 38. E. 3.

But note, That it appears the ſame Year fol. 41. that the Grant was by one Deed, and Patron and Ordinary made another Deed, but it is not expreſſed if it be a Confirmation, nor what Form it contains; But ſee the ſame Caſe Anno 8 H. 6. & 28. it appears that it was a Confirmation. Br. Charge. pl. 13.

8. Debt againſt the Succeſſor of the Parſon upon a *Grant of an Annuity by* his *Predeceſſor by Aſſent of the Patron and Ordinary*, and for Non-payment to forfeit 40 s. Nomine Pene, and Debt was brought of the Penalty, and ſo ſee that a Grant by Aſſent of the Patron and Ordinary, *is as good as if the Patron and Ordinary had confirmed it.* Br. Charge. pl. 13. cites 7 H. 6. 19.—— And herewith agrees Littleton tit. ----

9. Note for Law, That the *Parſon cannot charge without the Patron and Ordinary*, [or] *Dean and Chapter, where the Biſhop is Patron*, & *e contra* it ſeems *where the Biſhop is only Ordinary and not Patron*; and 'tis ſaid elſewhere alſo that the *Patron ought to have Fee Simple*, and this *in his proper Right*, as appears here by the Caſe of the Dean and Chapter with the Biſhop, where the Biſhop is Patron, and in the Caſe of Hill for the Parſonage and Glebe of Stoke upon Tyerne in the County of Salop. 33 H. 8. where the Parſon, Patron, Dean and Chapter made the Aſſurance; Quod nota; and therefore it ſeems, That the Biſhop was Patron there; And the *Diverſity* is, That *where the Biſhop is Patron he hath Intereſt in it, but where he is only Ordinary he has Judicial Power, but no Intereſt*, Note the Diverſity. Br. Charge. pl. 40. cites 11 H. 6. 9.

10. It was agreed by 3 of the 4 Juſtices, that Parſon has Fee Simple in Jure Eccleſiæ, and that *Waſt lies not for the Patron againſt the Parſon.* Br. Faux. Recov. pl. 51. cites 12. H. 8. 7.

11. If Patron *confeſſes Action of the Land*, a *Juris Utrum* lies for the Succeſſor; per Brook. But this ſeems to be, where *no Aid was prayed.* Br. Faux. Recov. pl. 51. cites 12 H. 8. 7.

But Brooke ſays, That this ſeems not to be Law; For it is *given to the Succeſſor*, and the Patron has not the Franktenement nor Reverſion, but the *Franktenement* is *in Abeyance*

12. Per Pollard; The Patron may have a *Writ of Error and Attaint* of a Recovery had againſt the Parſon. Br. Faux. Recovery. pl. 51. cites 12 H. 8. 7. Ibid.

(L) Patron and Ordinary in Time of Vacation. Their Eſtate and Power *in Time of Vacation ſeverally.* Patron.

See Penſions.

1. **During the Vacation, the** Franktenement of the Glebe **is not in the Patron.** 8 H. 6. 24. b.

The Ordinary ſhall have the Profits

of the Glebe in the Time of Vacation, becauſe it is Sanctuary, Et Non Negatur; but where the *Church is diſſolved*, the Patron ſhall have it. Br. Dean &c. pl 33. cites 9 H 5. 9.

2. **But it is** in Abeyance. **Litt.** 144.

And a Freehold can be

in Abeyance *in no other Caſe*, but only in the Caſe of the Parſon of a Church. D. 71 pl. 43. in Caſe of Withers v. Iſham.——It is the *ſame* in Caſe *of a Biſhop, Abbot, Dean, Archdeacon &c.* Co. Litt. S. 647. 342 b.——See Abeyance.

3. **The Patron has the Franktenement** in Right **during the Vacation.** 8 H. 6. 24. b.

The Patron has but *Jus Præſentandi*,

and has no Intereſt. Arg. Cro. J 53. Mich. 2 Jac. C. B. in Caſe of the King v. the Biſhop of Winton and Campion.

4. **The Patron ſhall** not take any Benefit of the Glebe **during the Vacation.** 8 H. 6. 24. b.

Though the Profits of the Church dur-

ing the Vacation are in the Incumbent upon his Induction, and not due to the Patron or Ordinary; (For if the Patron enters upon the Church in Time of Vacation, he thereby is not any Diſſeiſor, nor gains any Right. Sav. 18. [pl. 46. Paſch. 22 Eliz.]) yet the Patron and Ordinary have ſuch an Intereſt in the Revenues of the Church as that at Common Law they might have charged the ſame in Time of Vacation, which would have bound all ſucceeding Incumbents, becauſe no other had any Intereſt at that Time, but they only. Watſ. Comp. Inc. 8vo 748. cap. 48.

5. **If the** Parſon leaſes at Will **the Parſonage** and reſigns, (**by which the Will is determined**) **the** Patron cannot enter upon the Leſſee **and ouſt him, (for he has the firſt Poſſeſſion, and the Patron has no Right to the Profits)** 8 H. 6. 9. **Admitted.**

Treſpaſs *of a Houſe and Cloſe broken*; Chant ſaid, That the *Cloſe was the Church-yard* of D. *and the Houſe was the Church* of D. and the *Defendant is Patron*, and A. *the Parſon there leaſed the Parſonage to the Plaintiff at Will, and after* the Parſon *reſigned, and* the *Defendant as Patron preſented*, and *the Biſhop inquired of the Right of Patronage in the Church*, and the *Defendant as Patron entered to ſhew his Evidence* to the Patronage, and the Plaintiff by the Leaſe above held himſelf in &c. which is the ſame Treſpaſs &c. Judgment ſi Actio; And by ſome it is no Plea for want of Colour. But Strange and Martin Juſtices, ſaid clearly, that it is a good Plea. And the Reaſon ſeems to be, becauſe Lay Gents cannot know the Law that the Leaſe is void by the Reſignation. Br. Treſpaſs, pl. 121. cites 8 H. 6. 9.

6. **The Patron ſhall not have any** Action for Treſpaſs **done in the Time of Vacation,** 11 H. 6. 4. b.

7. **After the** Death of a Prebendary, **the** Dean and Chapter **ſhall have the Profits.** 33 E. 3. **Aid of the King** 103. **per Thorpe.**

8. **After the** Death of a Dean of a Free Chapel of the King, **the** King ſhall have the Profits of **his Deanry; For it is at the Election of the King, whether he will collate a New Dean.** 33 E. 3. **Aid of the King** 103. **per Fit.**

Watſ. Comp. Inc. 8vo. 748. cap. 40. cites S. C

9. But if the Dean had a Parſonage appropriated to him, **the King ſhall not have the Tithes and Profits thereof.** 33 E. 3. **aforeſaid, per Thorp.**

Fol. 340.

Watſ. Comp. Inc. 8vo. 748. cap. 40. cites S. C.

10. **If a Man has an** Annuity, **out of a Parſonage, and he** releaſes to the Patron in Time of Vacation, **this ſhall extinguiſh the Annuity.** * 21 H. 7. 41. Co. 5. *Forde* 81. b.

* Br. Deane &c. pl. 11. cites S. C. — Br. Releaſes, pl. 33. cites

S. C.——S. C. cited 5 Rep. 81. b. Paſch. 37 Eliz. C. B. in Ford's Caſe ——S P. 5 Rep. 71. a. Paſch. 34 Eliz in Lot's Caſe, cites 40 E. 3. 22. 18 E. 3. Avowry 77. 13 R. 2. Avowry 89. 14 H. 4. 4. Recordare longe.——Watſ. Comp. Inc. 8vo. 748. cap. 40 cites S. C.——Co. Litt. 266. a. S P. and that it is good in reſpect of Privity.

11. If a Judgment in Annuity was againſt a Parſon, and after in Time of Vacation he releaſes to the Patron, this ſhall extinguiſh the Annuity. 8 H. 6. 23. b. (But it does not appear whether the Releaſe was in Time of Vacation or of Plenarty) Vide 7 H. 6. 38. b. 41 E. 3. 20.

Watſ. Comp. Inc. 8vo 748. cap. 40. cites S. C.

12. But if a Man who has Right to the Glebe Land releaſes to the Patron in Time of Vacation all his Right it is not good, becauſe the Patron has not any Eſtate in the Land. 8 H. 6. 24. b. may be collected.

(M) *Ordinary.* [His *Power in Time of Vacation.*]

* 28 *H.* 8. cap. 11.

1. IN Time of Vacation, the Ordinary may give Liberty to any to hold the Parſonage for a certain Time (before a new Incumbent be) 8 H. 6. 9. (This was before the Statute of * H. 8. cap. which ordains, that the Ordinary ſhall ſequeſter.)

2. The Ordinary ſhall have the Eſplees and Profits during the Avoidance. 7 H. 6. 39. 11 H. 6. 4. b.

3. In Time of Vacation, if a Man has the firſt Poſſeſſion of the Parſonage, yet the Ordinary may give Power to another to inquire of the Right of the Patron in the Church, upon a Preſentment to him, and the Commiſſioner, and they who go there to ſhew their Right to the Commiſſioner, ſhall not be Treſpaſſors. 8 H. 6. 9.

Br. Quare Impedit, pl. 90. cites S. C.—— S. C. Cited Arg Roll.

4. If the *King* be Patron, and *does not preſent* to the Church, which is void, within ſix Months, *the Ordinary ſhall* not preſent, but ſhall *ſequeſter* the Profits, and find one to ſerve the Cure till the King will preſent one. Per Keble. 14 H. 6. 21.

R. 453. Hill 14 Jac. in Caſe of Colt v. Glover.——The Ordinary may ſequeſter a Church *Donative*, if the Patron does not preſent. Arg. Roll. R. 453. in Caſe of Colt v. Glover; cites 3 Jac. Gaer v. ...

5. During the Vacation the Ordinary *may make a Leaſe.* Arg. Roll. R. 453. Hill. 14 Jac. in Cam. Scacc. in Caſe of Colt v. Glover.

(N.) Proviſion.

As to Matters of Proviſions &c. made heretofore by the Pope, it may be of little Uſe to inſert any Thing more here than only to refer to the Statute 25 E. 3. and other Ancient Statutes made to reſtrain them.——* Br. Preſentation, pl. 12. cites S. C.

1. IF the Proviſee of the Pope has Poſſeſſion of the Church before the Preſentee of the King, he ſhall be preferr'd; but if the Preſentee of the King has the firſt Poſſeſſion, he ſhall be preferr'd. * 8 H. 4. 21.

(O.) Advowſon. * *What.*

See Advowſon.

* An Advowſon, or as the Term is, Jus Patronatus, eſt poteſtas, preſentandi aliquem inſtituendum ad Beneficium Eccleſiæ ſimplex & vacans; and of other Reſpects, the Cauſes and Incidents of Advowſons, is deſcribed more amply in ſuch Manner, Jus Patronatus eſt jus Honorificum, Oneroſum, & Utile. In Effect this; A Patronage or an Advowſon, is a Right to preſent to the Biſhops or Ordinary a fit Perſon, by him to be admitted and inſtituted into a Spiritual Benefice when it becometh void; and he that has ſuch Right to preſent is called Patron, who is thus deſcribed; Patronus eſt defenſor Eccleſiæ, qui habet jus præſentandi Epiſcopo aliquem, vel aliquos in aliqua Eccleſia, & in ea ab eo inſtituatur. And he is ſo called, De Patrocinio, of Defence; becauſe he ſhould defend the Church, or a Similitudine Patris, quia ſicut Pater filium, ſic Patronus Eccleſiam, de non eſſe, deducit ad eſſe. He is called of Old Granvile Advocatus; as that he ſhould ſay, an Advocate of the Cauſes of the Church; and therefore the Inheritance is called Advocatio, or Advowſon, or is deviſed De Vocando; becauſe the Patron hath Power for the Preſentment of a fit Perſon, by the Name of his Preſentation. Dod. of Adv. 3. 4. Lect. 1.

1. A Dvowſon is Jus Mixtum, **becauſe the Commencement of every Preſentment commences by our Law, as by** Preſentment of the Lay Patron; **and by the Law of the Church takes Effect, as by** Ability, **Non-ability, or Criminoſus, which appertains to the Ordinary.** † 34 H. 6. 40. Per Aſhton.

——† Dod. of Adv. 3. cites S. C.

(P) Chapel.

See Prohibition &c.

1. A **Chapel** of Eaſe is **where there is a Church Parochial in the ſame Pariſh, and the Sacraments adminiſter'd in the Parochial Church, and not in the Chapel.** 8 H. 6. 32.

2. A Church Parochial cannot be a **Chapel.** 8 H. 6. 37.

3. **The Chapel of Eaſe** belongs to **the Church Parochial, and Parſon thereof.** 8 H. 6. 32. Fol. 341.

4. A Chapel is *not a Temporal Inheritance*, as an Advowſon is. Arg. Sti. 101. cites D. 83.

5. A Chapel is *not conveyed in Fines*, and Recoveries and Entries, *by* the *Name of a Tenement*, nor in any judicial Proceedings; *but* Tenementa *in a Grant* may contain a Chapel. Arg. Sti. 101. Thin v. Thin.

6. The *Nominee* to a Chapel of Eaſe *muſt have* the *Biſhop's Licence*, but who ſhall nominate whether the Patron and Rector of the Mother-Church, or the Builders, was not determin'd. Gibb. 158. The Caſe of the Chapel of St. John's in Holborn Pariſh.

(Q) Advowſon. *Spiritual Promotion. What* ſhall be ſaid a Spiritual Promotion.

1. A Deanry **is a Spiritual Promotion, and not Temporal.** D. 10 El. 273. 37. **By all the Juſtices.** S. P. 13 Rep. 70. pl. 34. Paſch. 8 Jac. in the Pariſhioners of St Alphage's Caſe.—In Caſe of **Fairfield and Gayre**, Williams ſaid that Knights have been Deans, and have had Deanries, but 'tis by the Special Diſpenſation of the Archbiſhop, and that he hath ſeen ſuch Licences. D. 273. pl. 35. in Marg.—Yelv. 61. Paſch. 3 Jac. B. R. in the ſaid Caſe of Fairchild v. Gayer, 'tis held by all the Juſtices, That Deans may be Laymen, becauſe the Function is Temporal. And yet Williams J ſaid, That Laymen, who have Deanries, ought and always have had Diſpenſations from the Archbiſhop.—Brownl. 202. S. C. and P.——Dean and Chapter are a Body Spiritual, and annexed to the Biſhop throughout all England. Per Hobart Ch. J. but Winch doubted, and ſaid that a Dean may be a Layman, which Hutton confeſs'd, and ſaid that ſo was the Dean of Durham, by ſpecial Licence and Diſpenſation of the King, but that is a rare and a ſpecial

cial Caſe, and is not common and general; and therefore not to be brought as an Example, which was granted by Hobart Ch J. Winch. 65. Paſch. 21 Jac. C. B. Brigg's Caſe.

2. If the Nomination and Patronage of a Deanry be appointed to the King, his Heirs and Succeſſors, and he appoints a Dean, yet this is a Spiritual Promotion. D. 10 El. 273. 37.

3. *Clerk of a Pariſh* is not. 13 Rep. 70. Paſch. 8 Jac. C. B. The Pariſhioners of St. Alphage's Caſe.

4. *Church-Wardens* are not. 13 Rep. 70. in the Pariſhioners of St. Alphage's Caſe.

7. The *Lecturers in Cathedral* and Collegiate *Churches* are of the Number of Eccleſiaſtical Promotions. Watſ. Comp. Inc. 250. cap. 14.

See Donative.

(R) Advowſon. *Donative.*

See (5) pl. 4 in the Notes. Cro. C. 330. S. C. By Name of Bowderok v. Mackaller. —Cro. C. 337. S. C. By Name of Mackaller v. Todderick—Cro. C. 353. S. C.——Cro. C. 361. S. C.——Jo. 143. S. C. by Name of Todderidge v. Mackalley

1. A Donative of the Gift of the King may be with Cure of Souls, as the Church of the Tower of London is a Donative of the Gift of the King with Cure. Mich. 9. Car. B. R. between *Fletcher* and *Mackaller*, per Curiam, where Information was brought upon the Statute of 31. Eliz. of Simony, for procuring him to be promoted to the ſaid Church of the Tower for Money. & per Curiam it lies.

S. C cited Show Parl. Caſes. 176 in the Caſe of the Biſhop of London v. the Attorney General. — * The Reſignation is

2. A Church Parochial may be a Donative, and exempt from ordinary Juriſdiction, and the Incumbent may * reſign to the Patron, and not to the Ordinary; Nor can the ‖ Ordinary viſit, but the Patron by Commiſſioners to be appointed by him. Co. Litt. 144. cites H. 1. Ja. B. R. Rot. 601. between *Fairchild and Gayer*, in Treſpaſs for the Rectory Parochial Donative of St. Burien in Cornwall. Reſolved.

good both in reſpect of the Thing reſigned, and of the Perſon to whom it is made; For it being a Donative, and exempt from ordinary Juriſdiction, the Reſignation cannot be into his Hands, and the Incumbent ſhall not be conſtrained to keep the Church whether he will or no, if the Patron will not accept it, and becauſe there is no Perſon to whom the Reſignation can be made, but only into the Hands of the Patron it is good Per Cur. Yelv. 60. Paſch. 3. B. R. Fairchild v. Gayer.——Brownl. 201. S. C——Mo. 765. S. C——Cro. J. 63. S. C.

‖ The Ordinary has nothing to do with a Donative; which may paſs by Gift to the Parſon without Inſtitution or Induction, as is ſaid 8 Aſſ. 31. And the Donatives of the King are out of the Juriſdiction of the Ordinary, and not viſitable by him. Dav. Rep. 46. b. Paſch. 5 Jac. B. R. in Ireland, in the Dean and Chapter of Ferne's Caſe.

S. C. cited Wats Comp. Inc. 8vo. 520. cap. 14 ——Wats. Comp. Inc. 8vo. 305, 306 cap. 15. cites S. C ——

3. But in ſuch Caſe of a Donative Parochial a Man, who is merely a Layman, is not capable thereof, but a Clerk Infra Sacros Ordines is; For tho' he comes in by Lay Donation, and not by Admiſſion and Inſtitution, yet his Function is ſpiritual. Co. Litt. 601. the ſaid Caſe of St. Burien ſaid to be Reſolved.

Popham Ch. J. ſaid, That tho' a Church Donative in the Execution of the Charge be ſpiritual, yet the Patron may collate a mere Layman as well as the King may make a Temporal Man a Dean, Quod ſæpe accidit; But Gaudy, Fenner, Yelverton, and Williams contra Yelv. 61. Paſch. 3. Jac. in the Caſe of Fairchild v. Gaier.

(S) Advowſon. *Church with Cure. What* was a Church with Cure. [And *who* ſhall be ſaid to *have* the *Curam Animarum.*]

1. A Prebend **is not with Cure of Souls.** 29. E. 3. 44. **Admitted.**

2. **If there be a** Vicar endowed, who is Preſentative, and a Parſon Preſentative, **it ſeems that the Parſon has not the Cure of Souls but the Vicar.** 5. E. 2. **Quare Impedit** 165. **per Paſton.**

The Church of Weſtbourne in Suſſex has a *Parſon and Vicar*, and *Both are* admitted, inſtituted and *inducted and* Both *have Houſes there.* In Ejectment for the Rectory it was inſiſted for the Vicar, That the *Vicar pays Synodals and Procurations, and other Charges of the Viſitation* only, and *was Attendant upon the Ordinary*, and *reads divine Service*, and officiated there, *which the Parſon did not above once or twice in the Year*; And *ſeveral ancient Inſtitutions and Inductions of Vicars were produced, but* they *could not ſhew the Endowment itſelf*; On the other Side it was inſiſted for the Right of the Parſon, that all Sine-Cures are ſuch either in reſpect of the Inability of the Parſon as Impropriators, or in repect of Privilege of not being viſitable, That it could not be a Sine Cura as to him, becauſe he was inſtituted by the Ordinary, and therefore viſitable by him. It was agreed per Cur. That as well Parſon as Vicar may have Curam Animarum within the ſame Church; For there may be two diſtinct Patrons and two diſtinct Incumbents of the undivided Moieties of the ſame Church; And they paid no Regard to the Caſe in Roll Preſentment 341. For both being Preſentative, the Cure Prima facie is in both; And whether *Habitually* in the Parſon, and *Actually* in the Vicar is Matter of Evidence, ſince every one that is inſtituted has Cure, tho' (Accipe Curam tuam & meam) be not in the Inſtrument of Inſtitution, in which Obſervation Lord Coke [Co. Litt. 334] is miſtaken. Sid. 426. Mich. 21 Car. 2. B. R. Clarke v. Pryn & Clark v. Heath.

Note, it was ſaid, That there are ſeveral Churches in England which have Vicars endowed with Cure, and yet the Parſon has concurrent Cure, and *both take the Oath of Canonical Obedience*, and both are ſubject to the Ordinary as to their Lives, Doctrine, and Repairs of Houſes &c Ibid. 427——And after Conference with Sir George Palmer the Attorney General, he ſaid, That the Law had been taken before to be, that every Inſtitution ſuppoſed a Cure of Souls, yet by his Experience in his Office he found, that the King had ſeveral Donatives in Wales, and yet the Parſons thereof are preſented and inſtituted by the Biſhop as well as the Vicars; But he intends, That the *Vicars are inſtituted to all the Spiritualties, and the Parſons to all the Temporalties, except ſuch whereof the Vicar is endowed*; And ſaid he had ſeen two Precedents among the Antient Charters in the Tower to that Purpoſe. Ibid.——Vent. 15. S. C. by Name of Heath v. Prynn.

A Parſonage and Vicarage are *two diſtinct Eccleſiaſtical Benefices*, and the Parſon and Vicar have Curam Animarum, the *Parſon Habitualiter*, and the *Vicar Actualiter*. Per Noy Arg. Cro. J. 518. in Caſe of Britton v. Wade. cites 31. H. 6 14. 17. E. 3. 76. 5 E. 2. Quare Impedit 165.

3. **If an** Abbot, **or ſuch like Spiritual Man had been** Parſon Appropriate before the Statute of Monaſteries, **he ſhould have the Cure of Souls; For he differs from another Parſon only in this, That he ſhall be Parſon perpetual, and the other but for Life. Com.** *Grendon.* 496. **b.**

4. A Donative of the King **may be with the Cure of Souls, as the** Church of the Tower of London; **This is a Donative with Cure, and of the Gift * of the King; For till the Time of King John all Biſhopricks in England were Donatives, and ſo they are at this Day in Ireland. M. 6. Car. B. R. between** *Fletcher and Mackaller*, **per Curiam, in an Information upon the Statute of Simony, for taking the Church of the Tower (being a Donative of the King) for Money.** (R) pl. 1. S. C. * Fol. 342. S. P. There are alſo another Kind of Churches, which are neither Preſentative or Donative, but *Stipendiary*, and yet have Cure of Souls; as if there be an *Impropriation*, and it *has no Vicarage*, but only a certain Stipend is given yearly to him that ſerves the Cure, and that is meerly *Dative*, and at the Pleaſure of the Impropriator. 6 Mod. 230. in Caſe of Jacob v. Dallow.

(T) *Patron* of an Advowſon, who; and how conſidered. *Where one has* the *Nomination, and another* the *Preſentation.*

1. IN Quare Impedit, the Plaintiff *counted upon Fine, by which J. N. granted to W. P. and his Feme and their Heirs, That as often as the Chapel of B. voids, they ſhall preſent a Clerk to the Grantor, or his Heirs, and that they ſhall preſent him over to the Biſhop*; And per Curiam this is a Grant of the Preſentation, but becauſe it came to the King by Eſcheat, and he counted as above, but *did not ſhew if he preſented to the Grantor, and he refuſed to accept it*, or if he accepted it, and would not preſent over to the Biſhop, therefore it was Uncertain, and was Amended; and ſo ſee that the Grantee was Patron, and therefore he ſhall not be put to Writ of Covenant againſt him, who ought to preſent over, but ſhall have Quare Impedit. pl. 99. cites 24. E. 3. 69.

Dod. of Adv. 67. Lect. 12. ſays, He thinks the Law to be thus: If one hath the Nomination and another the Preſentation, and the Church becomes void, if the Lapſe incur, and he that hath hath the Preſentation only preſents to the Biſhop, before the Biſhop takes Benefit of the Lapſe, without any Nomination of the other, the Biſhop in this Caſe ought, and is bound to admit his Clerk, that he ſo preſenteth as the Clerk of the Patron himſelf. If Reſpect be had of each other, then are they both Patrons after a Manner, and by Injury offered by every of them to the other, one of them may puniſh the other. As if he that hath the Nomination will preſent immediately to the Ordinary, he that hath the Preſentation may bring a Quare Impedit or a Writ of Right of Advowſon againſt him, as his Caſe requires; ſo if he that hath the Preſentation refuſes to preſent the Clerk nominated to him, or preſents one himſelf without Nomination, the other ſhall bring a Quare Impedit or a Writ of Right againſt him, and his Writ ſhall be Quod permittat ipſum præſentare &c. but in his Declaration he ſhall declare the ſpecial Matter.——And tho' the one has *Writ to the Biſhop*, yet this ſhall not Ouſt the other of the Poſſeſſion, And if the Parſon makes a Leaſe or grants a Rent-charge, this Charge ought to be *confirmed by Both*; but in Writ of Annuity brought againſt the Parſon, *Aid* is grantable only of him that has the Preſentation; For this is in the right. Mo. 49. 147. Paſch. 5. Eliz. Anon.

2. In Quare Impedit the Plaintiff *counted, that the Abbot of B. Time out of Mind, and his Covent, have uſed to elect one* of *their Monks to be Prior of C. which is a Cell to the Monaſtery of B. and preſent him to the Anceſtor of the Plaintiff whoſe Heir &c. and that they have uſed to preſent him over to the Ordinary, and alleg'd Preſcription* therein, *and alſo Seiſin*, by Preſentation of one T. B. who was admitted, and that their Preſentee ſo admitted is dead, by whoſe Death the Church voided, and now the Abbot has preſented immediately to the Biſhop, without preſenting him to the Plaintiff, and ſo diſturb'd him, to the Damage &c. And it is ſaid there that *Preſcription is ſufficient* Title of itſelf; for it *ſuffices to ſay, that he is Lord of the Manor of C. and that all the Lords of the ſaid Manor Time out of Mind, have preſented.* And per Skip. Diverſe Preſentments in Quare Impedit are double; and the Defendant ſaid that Time out of Mind the Abbots have preſented immediately to the Ordinary, and after have uſed by their Letters to certify it to the Earls of H. whoſe Heir the Plaintiff is, requiring them to be favourable to them, by which T. B. was ſo preſented by the Abbot to the Ordinary, and inſtituted and received Abſque hoc, that he was received and inſtituted at the Preſentment of the Earl Anceſtor of the Plaintiff; Priſt and the Plaintiff e contra; and ſo it ſeems here, that if the Count is true, the Plaintiff is Patron, and not the Abbot; quære. Br. Quare Impedit, pl. 101. cites 24 E. 3. 77.

The Writ ought to be Quod Permittat ipſum præſentare; *but his Declaration ſhall be Special*, viz. That the Plaintiff ought to nominate one,

3. Quare Impedit the Plaintiff made Title, becauſe *Fine was levied between J. N. and the Abbot of B. of the Advowſon*, and the ſame *Abbot granted* by the ſame Fine, *that J. N. and his Heirs, at every Avoidance, ſhall name to him his Clerk, and he ſhould preſent him over to the Biſhop*, and *alleged Seiſin* accordingly, and that the Church is void, and he named a Clerk to the * Abbot, and he would not preſent him to the Biſhop, by which he brought Quare Impedit, and it was Quod permittat ipſum Nominare Clericum &c. where it ſhould be Preſentare Clericum; and therefore the Writ was abated. Br. Quare Impedit, pl. 56. cites † 4 H. 4. 10. 11.

and

and that he ought to preſent him over to the Biſhop, and the *Writ to the Biſhop* upon a Recovery by the Plaintiff *ſhall be, Quod Epiſcopus admittat Clericum ad Denominationem* &c. Dod. of Adv. 65. Lect. 12. ——*All the Editions of Brook are (Eveſque) but it ſeems is ſhould be (Abbe.)—— [† It ſhould be 14 H. 4. 10. 11.]

4. If a Man grants to me, that *I ſhall name a Clerk, and he ſhall preſent him to the Ordinary*, I am Patron; *but if he grants to me, that I ſhall name two, and he ſhall preſent the one*, I am not Patron, by reaſon that he has the Election; and *Grant of Nomination and Preſentation is all one.* Per Juſticiarios. Brooke ſays, Quære in whoſe Name the Letters of Preſentation ſhall be made. Br. Quare Impedit. pl. 133. cites 14 E. 4. 2. S. C. cited Dod of Adv. 65. Lect. 12. but miſprinted, as 14 E. 4. (26) whereas there are not ſo many Folio's in that Year; but it ſhould be 14 E. 4. 2. b. and the Miſtake ſeems to be by turning the (b) into (6) ——— [*But*] if a Man *grants* to me, *that I* and my Heirs *ſhall name the Clerk* to the Church of D. *as often as it voids, and that the Grantor ſhall preſent the ſame Clerk to the Ordinary*; In this Caſe I am Patron, and ſhall have Quare Impedit. Br. Quare Impedit. pl. 144. cites 14 H. 4. 11.

5. If he that hath the Nomination preſents to him that hath the Preſentation, he that hath the Preſentation may *diſturb* in two Manners, either *by refuſing the Parſon nominated, or* by *preſenting ſome other* himſelf that is not nominated. If he * *refuſe* to preſent him that is nominated to him, and Suit be commenced *without any actual Preſentation made by himſelf*, then the Writ to the Biſhop of him that hath the Nomination ſhall be, *That he ſhall recover his Nomination, and that the Biſhop ſhall admit ſuch as the other hath nominated* to the Preſentor, according to his Grant of Nomination; *but if* the Diſturbance, upon which the Suit is granted, be, becauſe *the Preſentor*, that ſhould preſent the Parſon nominated, *hath preſented ſome other himſelf* without Nomination, then the Nominator ſhall immediately, without any Nomination at all to be made to the other that hath the Preſentation, [have *Writ*] *to remove the other Incumbent.* Dod. of Adv. 68, 69. Lect. 12.

* If the *Preſentor refuſes to preſent the Nominee* of the Nominator, no Action lies. Mo. 842. Paſch. 13 Jac. in the Caſe of Ford v. Hoſkins.

6. If one hath the Nomination, and another the Preſentation, if *ſuch Right of Preſentation accrues to the King*, he that has the Nomination *ſhall nominate to the Chancellor* ſtill, *who in the Name of the King ſhall preſent* to the Ordinary. And if the *King preſents without any ſuch Nomination*, the Nominator ſhall bring his *Quare Impedit againſt the Incumbent only*, becauſe the King cannot be termed as an Uſurper. Dod. of Adv. 69. Lect. 12.

7. If a *Stranger preſents*, he that hath the Nomination and he that hath the Preſentation ſhall join in *Quare Impedit*; the Book ſays, that each of them ſhall have Quare Impedit. D. 48. pl. 17. Marg. cites P. 5 Eliz.

(U) Incumbent. Who.

See (Q. a) pl. 20.

THE Incumbent after a *Recovery againſt him in Quare Impedit* continues Incumbent *de facto 'till Preſentment* by the Recoveror. 2 Roll. R. 62. Mich. 12 Jac. B. R. in the Caſe of Whittler v. Singleton.

2. Where there is an Avoidance de Facto, and the *King, ſuppoſing he hath a Title to preſent by Lapſe, doth* accordingly *preſent*, when in Truth he *hath no ſuch Title*, and a Recovery is had againſt him by one who had no Title; tho' he which comes in by ſuch Lapſe is not Incumbent, nor gains the Patronage, yet he is an Incumbent as to all Eccleſiaſtical Things (viz.) To have Offering, Tithes &c. Hutt. 66. Mich. 21 Jac. The ſecond Reſolution in the Caſe of Rudd v. Biſhop of Lincoln.

3. If the *King preſents and miſtakes his Title* his Preſentment is void, and the Preſentee is no Incumbent. Arg. Het. 51. Mich. 3 Car. C. B. in Thomſon's Caſe. cites 6 Rep. 26. Green's Caſe.

But where ſuch Preſentee in the Principal Caſe ſu'd for *Dilapidation*, the Court denied a Prohibition, becauſe that he was now Incumbent, and they would not take Notice of the ill Preſentment of the King. But in Caſe of *Simony*, the Statute makes the Church void, and then the *Judges may take Notice* of that, and grant a Prohibition if the Parſon ſues for Tithes. Hett. 51. Thomſon's Caſe.—— Litt. Rep. 60. S. C.

4. *Poſſeſſion*

4. *Possession as* Incumbent is not of the *Incumbency* itself. Per Richardson Ch. J. Litt. R. 204. Trin. 5 Car. C. B. in Prust's Case.

For more of Parson and Patron in General, See **Appropriations, Dismes, Donative, Prohibition,** and other proper Titles.

Presentation.

(A. a) *To what Thing* a * Presentation may be.

* A Presentation *is the Nomination of a Clerk to the Ordinary to be admitted and instituted by him* to the

1. BEFORE the Time of King John, the King and others, Founders and Patrons of Priories or Abbies, were wont to present Priors or Abbots. 11 H. 4. 68. b.

Benefice void; and the same being in Writing, is nothing but *a Letter Missive* to the Bishop or Ordinary to exhibit to him a Clerk to have the voided Benefice; the formal Force hereof resteth chiefly in these Words (Præsento vobis Clericum meum) Dod. of Adv. 63. Lect. 12. cites 13 H. 8. 14. b. And says, That therefore in our Books of Law an Advowson is call'd nothing but a Nomination or Presentation, a Power to enable another to have the Benefice, which notwithstanding the Patron cannot enjoy.

2. But a free Election was granted by King John to the Priors. 11 H. 4. 68. b.

3. It is good usage that the Abbot shall name a Monk to the Patron of the Priory, which is a Cell of the Abby, and the Patron shall present him over to the Bishop, and so shall be instituted. 11 H. 4. 68. b.

4. So it is a good usage, that the Covent of a Priory shall elect a Prior, and shall nominate him to the Patron, and he shall present him over; and if they do not choose within five Months, that the Patron may present whom he please. 30 E. 3. 21. b.

5. A Presentment may be to a Deanry. 17 E. 3. 40. Adjudg'd.

6. A Presentment may be to an Hospital. 21 E. 3. 6. b.

A *free Chapel may be by two Means,*

7. A Presentment may be to a Chapel. 14 H. 3. Quare Impedit. 183. Adjudged.

the one by Grant of the King to make it Donative, and the other to make it Presentative to the Ordinary, and then the Ordinary may meddle, and may present by Lapse; Contra, Where it is Donative by the Founder and his Heirs, and there *the Ordinary cannot visit it; and when* Free Chapel Donative is *void*, the *Founder may re-take it, and not appoint any other Incumbent.* Contra, of a Presentative. Br. Presentation. pl. 43. cites 6 H. 7. 14. Per Keble.

See (B. a) pl. 2.--S.P. Watf. Comp. Inc. 8vo 207. cap. 13.

8. If a Stranger presents to a Donative, and his Clerk is instituted and inducted thereupon, yet it is meerly void. Co. Litt. 344

(B. a) *What* Act or Thing *will make a Church Presentative*, which is not Presentative of itself.

See Donative.

S. P. Cro J. 63. Pasch. 3 Jac. B. R. in the Case of Fairchild v. Gayer. —— *So* of a *Chapel Donative.* Br. Corporations. pl. 76. cites old Natura Brevium 35. —— *So* of a *Chapel annex'd to another Church.* Br. Quare Impedit. pl. 39. cites Fitzh. tit. Quare Impedit. 151. 18 E. 3. 15. —— Br Presentation. pl. 9. cites 47 E. 3. 4. —— *So* if an Abbot *Parson imparsonee presents.* Br. Corporation. pl. 76. cites Old Nat. Brev. 35. —— *So* if a Man *presents to an Abbey Elective.* Br. Corporation. pl. 76.

1. IF the Patron of a Rectory Parochial Donative presents thereto, and his Clerk is admitted and instituted; this is now become Presentative, and never shall be Donative afterwards. Co. Litt. 344

A private

A private Act of Parliament divides one Pariſh into three; and enacts, that the Right of Patronage and Preſentation ſhall belong to the Dean and Chapter of D. in ſuch Manner as the Nomination or Preſentation of the Old Church did, and not otherwiſe. The Old Church was a Donative. The new Churches ſhall be preſentable. MS. Tab. Tit. Advowſon. Feb. 19, 1717. Shirt v. Carr.

2. But if a Stranger preſents thereto, and his Clerk is admitted and inſtituted, yet this ſhall not make it Preſentative, becauſe it is merely void. Co. Litt. 344. S. P. Watſ. Comp. Inc. 8vo. 182. cap. 12.—S. P. Watſ. Comp. Inc. 8vo. 304. cap. 15.

3. If the King *preſents to a Chapel by Name of a Church*, it ſhall loſe the Name of the Chapel; quod nota, Br. Preſentation. pl. 9. cites 47 E. 3. 4.

4. Tho' uſually a *Free Chapel* is Donative, yet by the Foundation, or after *by Compoſition*, it may be Preſentative. Watſ. Comp. Inc. 8vo. cap. 12.

(C a.) Preſentment to the Church. *What Perſons may preſent*, and who ſhall have the Preſentment. The *King or others*.

Fol. 343.

1. If a Prebendary of a Prebend be elected Biſhop, and after the King grants the Temporalties to him, and afterwards he is conſecrated, the Biſhop ſhall have the Preſentment to the Prebend, and not the King, becauſe it is not made void till Conſecration, at which Time he was Patron; for the [Biſhop in Reſpect of the] Biſhoprick was Patron. 41 E. 3. 5. b. adjudged. 46 E. 3. 34. accordingly, where the Incumbent of an Hoſpital is created a Biſhop. Dr. Spencer, who was one of the Prebendaries of Ely, was *made Dean* by the King; ſo that the Prebend was avoided by Ceſſion to whom it did belong, if this Ceſſion had not intitled the King? The Judges ſeemed to incline for the King, but it was adjourned for further Argument. Freem. Rep. 256. pl. 272. Trin. 1678. The King v. Biſhop of Ely.

2. But if the Incumbent be made Biſhop by the Pope, and after the Temporalties are granted to him, the King ſhall preſent thereto, tho' the Biſhop be Patron. 46 E. 3. 32.

3. If the King creates an Incumbent of a Common Perſon a Biſhop, the Patron ſhall preſent, and not the King. 41 E. 3. 5. b. admitted, and * 44 E. 3. 15. b. admitted. 46 E. 3. 32. admitted. 7 H. 4. 25. b. 26. admitted. 11 H. 4. 38. 21 E. 3. 40. admitted. For the King made Title to it as Guardian in Chivalry of the Patron. D. 6 El. 228. 48. and 7 El. 223. 12. adjudged as it ſeems. But the Law is otherwiſe now generally taken and agreed, ſcilicet, That the † King ſhall have the Preſentment. Contra. H. 29 El. B. R. *Holland's* Caſe. Where an Incumbent is *created a Biſhop*, the King or other Patron may preſent to his Ancient Benefices. Quære of the Patron; for ſome ſay now, that in ſuch Caſe of Creation the *King ſhall preſent to all, of whoſoever Patronage they are.* And per Norton, *Baſtard* ſhall not preſent to a Church; *Quære* of this Uſage; for *it ſeems that the King ſhall not preſent to another's Advowſon.* Br. Preſentation, pl. 14. cites 11 H. 4. 37.——*Parſon is made a Biſhop*; the King ſhall preſent not only Hac Vice, but *Toties Quoties*. 3 Lev. 377. Mich. 5 W. & M. C. B. The King v. the Biſhop of London.--The King has the ſame Prerogative in *Churches newly erected*, as in old Churches, to preſent on *Promotion* of a Parſon to a Biſhoprick. 3 Lev. 382. Mich. 5 W. & M. C. B. The King v. The Biſhop of London.——* It ſhould be 44 E. 3. 25. b. pl. 34.——† Mo. 399. Wright's Caſe. S. P.

4. If a Church voids, to which the Biſhop has Title to preſent as Patron, in Reſpect of the Temporalties, if he dies before Preſentment; For it was void the ſame Day

that the Temporalties came into the King's Hands. Br. Preſentation, pl. 4. cites 44 E. 3. 3. Per Thorp & Belknap.——The Truth of the Caſe was, that the *Biſhop preſented his Clerk, who was Admitted, Inſtituted and Inducted before Dinner, and he died the ſame Day after Dinner*; but the Preſentee was a Proviſor, and *had not Corporal Poſſeſſion in Life of the Biſhop.* Ibid. [But quære as to the Induction, tho' it is ſo mentioned in the Year-Book and in Brook; and Brook ſays *Sic vide*, that it is no Plenarty againſt the King till Induction.]——Br. Plenarty, pl. 3. cites S. C.——And where the King has the Temporalties in Time of Vacation, and dies, the next King ſhall have them, and not the Executors, and yet it is but a Chattel. Br. Prerogative, pl. 85. cites 24 E. 3. 42.——*Where the King is intitled to the Poſſeſſion, and finds the Church void, he ſhall have the Preſentation*; and ſo it appears often in F. N. B. Br. Preſentation, pl. 29.——*As* in Quare Impedit the Biſhop of D. was Patron of C. the Church voided, and *the Biſhop* gave the Preſentation, ſcilicet, *made Collation to* N. C. and after the Biſhop *died the ſame Day* that he gave it, and *before Inſtitution and Induction*, by which the King had Writ to the Biſhop, and the Gift void. Br. Preſentation, pl. 29. cites 24 E. 3. 30.—* Ibid. pl. 10. cites S. C.—Br. Quare Impedit, pl. 42. cites S. C.

the King ſhall have the Preſentment, and not his Executors. * 50 E. 3. 26. 9 H. 6. 16. **b. admitted.** 24 E. 3. 26. **b. Curia.**

5. And **if Abbot or** Biſhop be Patron, and the Church voids, **and the Abbot** dies, **by which the Temporalties come into the Hands of the King, and after** Livery is ſued by the Succeſſor out of the Hands of the King; **the King ſhall have the Preſentment.** 7 H. 4. 25. b. 18 E. 3. 1. 20. 24 E. 3. 26. **b. Curia.**

6. **If** during the Vacancy of the Archbiſhop of York, and the Temporalties being in the Hands of the King, **the** Deanry voids, **the King ſhall have the Preſentment thereto, tho' by** Compoſition **between the Archbiſhop and the Chapter, the Chapter is to elect him**; for **De Jure the Patronage thereof belongs to the Archbiſhop, and the Compoſition cannot bind the King who comes in** Paramount, **as Supreme Patron.** 17 E. 3. 40. **adjudged.**

7. **If the** youngeſt Daughter Coparcener be in Ward to the King, **and the** Church voids; **the King ſhall have the Preſentation alone, and not the other Coparceners.** 47 E. 3. 14. **b. admitted.**

In Quare Impedit the *Plaintiff ſaid, that J. S. was ſeiſed of the Manor of D. and the Advowſon appendant and preſented, and after gave the Manor cum pertinentiis to the Grandfather of the Plaintiff in Tail, who was ſeiſed, and had Iſſue 4 Daughters*, and *died*, and that *he is Heir to the Eldeſt*, and the Tenant in Tail died, and *the four Daughters entered into the Manor and into other Land, and made Purparty of the Land and Manor, except the Advowſon*, and the Advowſon remained to them in Common, the *Eldeſt Daughter died*, the *Church voided*, and they could not agree in the Preſentment, *by which the Preſentment belonged to the Plaintiff as Son and Heir of the Eldeſt Daughter*, who preſented and the Defendant diſturb'd him; *the Defendant ſaid that the Land was held of the King, and he ſeiſed, and the three others ſued Livery of their Parts* (for they three were of full Age) *and the Plaintiff, Son of the Eldeſt Siſter, was within Age, and in Ward* of the King, *and the Church voided and the King preſented*, and at full Age the Plaintiff ſued Livery of his Part, and all in Common ſued Livery of the Advowſon, and now the Church is void again, by which it belonged to the Defendant, as Heir to the ſecond Daughter, to preſent. Laicon ſaid the Preſentment of the King ſhall be ſaid in the Right of all the Parceners, and not in Right of the Eldeſt only; and therefore now, becauſe they cannot agree in Preſentment, it belongs to the Eldeſt; which Choke denied, and ſaid that it ſhall be ſaid the Turn of the Eldeſt only, which the King took; But the Court was againſt him; quod nota; by which the *Defendant pleaded Partition to preſent by Turn.* Br. Preſentation, pl. 35. cites 38 H. 6. 9.——Br. Prerogative, pl. 44. cites S. C.——Br. Livery, pl. 25. cites S. C.

8. In Quare Impedit it is agreed, That where an * *Incumbent* is *created a Biſhop, his Ancient Benefices are become void in Fact*, and the *Patron may preſent*; *but* † where a Parſon *takes ſeveral Benefices incompatible without Licence* or Plurality, *this is a Voidance in Law*, and he *ought to be deprived of one of thoſe before the Patron can preſent*, and the Patron may ſue the Deprivation to the Ordinary. Br. Preſentation, pl. 14. cites 11 H. 4. 37.

* S. P. Br. Preſentation, pl. 48. cites S. C. For he who has an Office of Sovereignty, cannot uſe an inferior Office.——

† Br. Depoſition, pl 3. cites S. C.

9. *Conuſee was of a Statute* upon which a Manor is extended, to which Advowſon is appendant. Per Cur. The Advowſon may be extended; and if it become void during the Conuſee's Eſtate, the Conuſee may preſent. Ow. 49. Mich. 32 & 33 Eliz. Arundell v. Biſhop of Glouceſter.

10. It

10. It was adjudged that *Truſtees of a Term* for 500 Years, for the raiſing 6000 l. ſhould preſent. See Lutw. 902. b. Paſch. 11 W. 3. B. R. in the Pleadings of the Releaſe. Biſhop of Exon and Hesket v. Freek.

11. *If A. ſells an Advowſon to B.* but *before the Conveyance* to B. and during the Seiſin of A. *the Church becomes void*, tho' it remains vacant till after the Conveyance to B. yet B. can't preſent. 2 Lutw. 1631. Trin. 2 Ann. C. B. Crane v. the Biſhop of Norwich.

12. *Excommunicated Perſons* were ſaid Per Keble to have no Ability to preſent to a Church. Wentw. Off. Execut. 16.

It is ſaid that Perſons Outlaw'd and Excommunicated may preſent to their Churches, and their Preſentations ſhall ſtand good till ſuch Time as they be avoided. Watſ. Comp. Inc. 8vo. 249. cap. 13. cites Parſon's Law, cap. 10. But adds a Quære whether the Biſhop may not refuſe the Preſentees of ſuch Perſons, and ſo ſuffer the Churches to lapſe to himſelf.

13. If an *Alien* born *purchaſes an Advowſon*, and the Church becomes void *after Office found* that he is an Alien, *the King ſhall preſent*. Watſ. Comp. Inc. 8vo. 179. cap. 11. cites Parſon's Law, fol. 7. cap. 10.

(Da.) *In what Caſes* the *King* ſhall preſent.

1. IF A. be found in Ward by Office, for Land held in Capite, and that he is ſeiſed of an Advowſon in Fee, or that he is of full Age, and after his full Age, the King being intitled to a Livery, A. tenders his Livery, and after the Church voids before Livery ſued, but after Livery is ſued without any Default made after the Tender, yet the King ſhall preſent; for tho' the Livery is diſcharged if he dies before Livery ſued, as *Hale's* Caſe is, yet the Poſſeſſion of his Land and of the Advowſon is not * out of the King till the Livery ſued out. This is the Courſe of the Court of Wards. * Fol. 344.

2. Tho' it be admitted, that if the Incumbent of a common Perſon be created a Biſhop, that the King ſhall have the Preſentment to the Church for this Turn by his Prerogative, yet it ſeems if the King grants to the Incumbent before he is created Biſhop, a Diſpenſation Retinere the Church with his Biſhoprick, and after he is created Biſhop, and dies Incumbent, it ſeems the King ſhall * not preſent to his Church by his Prerogative, becauſe the Church is not void by his making him Biſhop, in which Caſe the Prerogative gives the Preſentment to the King, but by Death of the Incumbent, in which no Prerogative holds Place. Co. Ent. 474. *Hele's* Caſe, there pleaded that in ſuch Caſe the Church voided by Death, and admitted that it appertains to the Patron to preſent upon his Death. * S. C. and P. cited Arg. Show. 489. Mich. 5 W. & M. in Caſe of The King v. Dr. Birch —— And cites D. 428. b. Parkhurſt's Caſe.---And 233. a.

3. If the King ſeiſes an Advowſon without Cauſe Ignorans tituli ſui, and after the Advowſon voids, and he, who Right has, comes and has Ouſter le Main cum Exitibus, yet he ſhall loſe the Preſentment hac vice, for nothing paſſes by the Word (Exitibus) but Rents and Profits of a Thing, and not the Preſentment; for it is not Profit to the Patron, but Pre-eminence, and the Profit is to the Parſon, and if the Patron takes the Profits it is Simony. 24 E. 3. 29. and Brook Iſſues 21. 26. The Caſe was, that a *Man who held of the King in Chief held another Manor with an Advowſon Appendant of another for Term of Life, Reverſion ſued* the *Reverſion to J. N.* and dy'd, the *King ſeiſed all*, and the *Advowſon voided*, and he in *Reverſion preſented*, and the *King brought Quare Impedit, bearing Date before the Ouſtre le Main*, and the King recovered the Preſentment; For *by the Voidance the Preſentation was veſted in the King by reaſon of his lawful Seiſure* of the Land of his Tenant, Ad quod &c. and the Ouſter le main cum exitibus does not give the *Preſentation*; For this *is neither Iſſues nor Profits*, but was a Thing veſted in the King, and yet by Livery of the Land to him who Right has, Fees and Advowſon ſhall paſs, but not Preſentations veſted before. Br. Preſentation, pl. 28. cites 24 E. 3. 59:——Br. Prerogative, pl. 31. cites S. C. [And both Roll and Brooke are Right; that in Page 29 is pl. 16. and the other in Page 59. is pl. 48.] *to the King, and obtained Ouſter le Main cum exitibus* of the Manor, (and it is ſaid there, that the *King has Right in this Caſe to ſeiſe, but not to retain*;) He in

4. If

Where the *Church voided after the Temporalties came into the Hands of the King*, and the *King died*,

4 If a Prebend voids, the Temporalities being in the Hands of the King, the King ſhall have the Preſentment. 18 E. 3. 31. b. 21 E. 3. 5. adjudged, 29, 30. 24 E. 3. 26. b. Curia. 1 E. 3. 22. b. 5 E. 2. Quare Impedit 165. Adjudged in Caſe of a Vicarage. 19 E. 2. Quare Impedit 178. Adjudged of a Vicarage, though ſaid that it was Spiritual.

and they came to the After-King, the *Succeſſor King ſhall not preſent* by reaſon of the Statute 25 E. 3. Pro Clero, cap. 1. [which ſee Raſt. 112] *That the King ſhould not preſent in another's Right of any Avoidance but in his own Time.* Br. Preſentation, pl. 13. cites 11 H. 4. 7.

It is no Plea that it did not void during its being in the

5. If a Church of the Patronage of the Biſhop voids after the Death of the Biſhop, and before Seiſure of the Temporalties, yet the King ſhall have the Preſentment. 12 E. 3. Quare Impedit 56. per Shard.

Hands of the King, by reaſon of the Death of R. late Biſhop; For if the Temporalties were in the King's Hands by Death of any other, or by other Means, yet the King ſhall preſent. Br. Quare Impedit, pl. 94. cites 24 E. 3. 26 —— So if an Advowſon be void by 6 Months, at which Time the King is ſeiſed of the Temporalties of the Biſhoprick, the King ſhall preſent to this Advowſon as the Biſhop ſhould do. F. N. B. 34. (G)—Where it is awarded, that the Temporalties of a Biſhop be ſeiſed into the King's Hands, the King ſhall take Conuſance of them, and ſhall preſent to an Advowſon without Office; For the Temporalties of a Biſhop are always of Record in the Exchequer. Br. Office devant &c. pl. 17. cites Fitzh. tit. Scire facias 113. 21 E. 3. 30.

The King ſhall not have Preſentment *to the Advowſon in Groſs by the Ward of an Infant* who is *in Ward for other Lands*;

6. So if the Tenant of the King dies, and after, before Seiſure of his Heir in Ward, a Church voids, the King ſhall have this Preſentment. 12 E. 3. Quare Impedit 56.

per Brian. But all the King's Serjeants contra; for, becauſe the King has the Body, therefore he ſhall have the Preſentations. Br. Preſentation, pl. 42. cites 3 H. 7. 5.

Quare Impedit by the King; the *Tenant of the King had Iſſue three Daughters and died*, and the *Tenements came to the King by his Prerogative*, and *Partition was made in Chancery*, and this *Advowſon allotted to the one who took Baron, and had Iſſue and died*,

7. If the Tenant of the King has Title to preſent to an Advowſon which is void by ſix Months, and after the Tenant of the King dies before the Biſhop preſents by Lapſe, his Heir within Age and in Ward of the King. Now the Biſhop ſhall not preſent by Lapſe, but the King ſhall preſent. Fitz. Nat. 35. a. and there vouches 18 E. 3.

8. If there are three Coparceners of an Advowſon, whereof one is within Age, and in Ward to the King, and the other two of full Age ſue Livery with Partition, ſaving the Prerogative of the King, to preſent to the Avoidances during the Minority of the Ward, and after the Church voids during the Minority, the King ſhall preſent. 31 E. 3. Quare Impedit 1. Adjudged.

9. If there are three Coparceners of an Advowſon, whereof one is in Ward to the King, who grants her over to another with Knights-Fees and Advowſons, and after the other two being of full Age ſue Livery of the King with Partition to preſent by Turn, ſcilicet, the eldeſt firſt, the 2d. in the 2d. Place, and the Ward laſt, ſaving the Prerogative of the King for Cauſe of the Purparty of the Ward to preſent Prima Vice ſi Eccleſia vacare contigerit during her Minority, and after the Church voids during the Minority of the Ward, the King ſhall preſent, becauſe the Partition was after the Grant of the Wardſhip over &c. and ſo the Prerogative remains in the King. 31 E. 3. Quare Impedit 1. Adjudged,

the Iſſue within Age and in Ward of the King, and the *Prebend voided, and the King preſented*, the *Defendant ſaid, That after this the three Daughters made Partition to preſent by Turn, and that the firſt had her Turn, and* then the *Second, and* the *third took the Defendant to Baron, and had Iſſue, and died, and this Avoidance now belongs to him as Tenant by the Curteſy, and ſhewed the Compoſition*, and becauſe by the firſt Partition in Chancery the King was aſcertained of his Tenant of Record, and *this new Partition without Licence of the King is an Alienation in Law without Licence*, therefore Judgment pro Rege; For it was agreed, that though Partition be made between Parceners, they are yet in by the common Anceſtor and may vouch as Heir, and every one ſhall have Advantage as Heir, yet by the Partition in Chancery, the one was ſole Tenant [to the King] of the Advowſon, and by the laſt Partition to preſent by Turn all are Tenants thereof, and Writ of Right of Advowſon ſhall be brought againſt all, and before againſt every one alone, and * ſo the King was a Stranger to his Tenant [by the Compoſition which could not be without Licence.] Quod Nota; and therefore the King recovered

vered. Br. Quare Impedit, pl. 73. cites 21 E. 3. 30, 31.——*And* it was ſaid, that where the *King has Advowſon in Common with others, as by Cauſe of Nonage of an Infant, who has Title to preſent by Turn* or otherwiſe, that the King by his *Prerogative* ſhall have the Preſentment at every Voidance ſo long as any Parcel of the Advowſon remains in his Hands. Brooke ſays, *Quære inde* ; For this is a Partition ; *But if no Partition was*, then the King by the Intereſt of the one Coparcener ſhall have the whole Preſentation. Ibid.——Br. Alienation, pl. 7. cites S. C.——Br. Prerogative, pl. 21. cites S. C.

[* Br. is, (Et iſſint Eſtranger del Roy de ſon Tenant) but the Year Book is as tranſlated.]

10. The Biſhop of Ely ſaid to me, that he had ſeen a *Preſentation in the time of King E.* 3. made by the ſaid King, whereby he preſented to a Benefice Pro illa Vice which was of another's Patronage, by theſe Words, *Ratione Prerogativæ ſuæ*, which Benefice voided *by reaſon that the King had made the Incumbent thereof a Biſhop*, who was conſecrated. So that when Benefices become void by making of an Incumbent a Biſhop, the King ſhall preſent to all his firſt Benefices Pro illa Vice, whoſoever is Patron of it ; Quod Nota. Br. Preſentation, pl. 61. cites 5 M. 1.

Ever ſince this Caſe was abridg'd by Brooke, this Prerogative has been enjoyed by the Kings of England, and there are no Precedents that the Patron has preſented upon the Promotion of his Incumbent ; Per Cur. 4 Mod. 210. in delivering the Judgment of the Court in the Caſe of the Attorney General v. Biſhop of London, Dr. Lancaſter, and Dr. Birch.

(E. a) In what Caſes the King ſhall preſent, *where Chattel veſts.*

Fol. 345.

1. If the Tenant of the King has an Advowſon which voids, and after dies his Heir in Ward to the King, the King ſhall have the Preſentment, and not the Executor of the Father. 18 E. 3. 21. 12 E. 3. Quare Impedit 159. Though the Heir be of full Age.

2. The Law would be the ſame though Lapſe had incurred to the Ordinary in time of the Father, if the Ordinary had not collated before his Death. 18 E. 3. 21.

3. If the Tenant of the King has an Advowſon which voids, and the Tenant preſents, and his Clerk is admitted and inſtituted, and before Induction the Patron dies, and the Advowſon comes by Wardſhip to the King, he ſhall preſent ; For the Church is not full againſt him before Induction. 38 E. 3. 9. by Thorpe. 21 E. 4. 34. b. ſaid to be adjudged in the 40 of E. 3.

Br. Preſentation, pl. 17. cites 38 E. 3. 3. 4. S.P. but that among common Perſons it is otherwiſe.

4. If a Church of the Patronage of a Biſhop voids in Time of the Biſhop, and after the Biſhop dies, the King ſhall have the Preſentment by reaſon of the Temporalties, and not his Executor. 21 E. 3. 6. b. 50 E. 3. 26. 9 H. 6. 16. b. 29 E. 3. 44. 24 E. 3. 30. Adjudged.

5. If a Church of the Patronage of a Biſhop, Abbot, or Prior voids, and the Biſhop, Abbot, or Prior preſents, and after dies before Inſtitution, the King ſhall have this Preſentment by his Prerogative. Liber Parliamentorum, 21 E. 1. The Prior of *Bermundſey's* Caſe, adjudged in Parliament. 24 E. 3. 30. Adjudged.

6. So if the Biſhop, Abbot, or Prior dies after Inſtitution of the Clerk, and before Induction, the King ſhall have this Preſentment by his Prerogative. 11 H. 4. 9. by all the Juſtices. Fitz. Nat. 34. K. 36 K. 38 E. 3. 4. Hobart's Reports 208.

So after *Collation to a Prebend*, if he dies before Induction, by which the Temporalties come to the King. Br. Preſentation, pl. 13. cites 11 H. 4. 7. per Cur

7. Contra Liber Parl. 21 E. 4. 24 E. 3. 30. Admitted per Curiam, ſaying, Donum Nullum [eſt] if Inſtitution be not made in his Life.

8. If the King has an Advowſon by Cauſe of a Wardſhip, and grants it to another during the Minority of the Ward, and after the Church voids

voids, and continues void till the full Age of the Ward, by which the Estate of the Grantee is determined, yet the Grantee shall have the Presentment, and not the King. Contra 29 E. 3. 8. b. Admitted by Issue.

An Avoidance belonging to a Bishop who died, by which the Temporalties came into the Hands of the King, belongs now to the King. Br. Quare Impedit. pl. 42. cites 50 E. 3 26 —— Br. Presentation, pl. 10. cites S. C.

9. If Lapse incurrs to the Ordinary, and before the 6 Months past the Ordinary is translated or dies, it seems that the King shall have the Presentment, and not the Ordinary or his Executors, or the Guardian of the Spiritualties. P. 40 El. B. Dubitatur. Hobart's Reports 280. in Case of Death.

See (C) pl. 4.

10. If a Bishop has Title to present to a Prebend, and presents his Clerk, who is instituted and inducted in the Morning, and after Dinner the same Day the Bishop dies, by which the Temporalties come into the Hands of the King, yet the King shall not have this Presentment. * 43 E. 3. 3.

* This should be 44 E. 3. 3.

(F a) Presentment to the Church. *Who* shall present.

1. OF Common Right the Patronage of the Deanry of the Archbishoprick appertains to the Archbishop, and he shall present to the Avoidance. 17 E. 3. 40. b.

Fol. 346.

2. But by Composition it may be Elective by the Chapter, and yet the Patronage shall remain in the Archbishop. 17 E. 3. 40. b.

3. The Patronage of a Prebend appertains to the Bishop, and he shall present thereto. 17 E. 3. 40. b.

If a Vicarage happen void, and before the Parson presents he is made a Bishop &c. yet he shall present to this Vicarage because it was a Chattle vested. F. N. B. 34. (N) ——* Watf. Comp. Inc. 8vo. 248. cap. 13. cites S. C. And Dr. Watson conceives, that if the Parsonage be filled before the Vicarage, yet the Right of presenting to the Vicarage remains in the Patron of the Parsonage. Quære.

4. If the Parson ought to present to the Vicarage, yet if the Vicarage becomes void during the Vacancy of the Parsonage, the Patron of the Parsonage shall present. * 19 E. 2. Quare Impedit. 178.

5. If the King grants to an Abbot and his Successors, that the Monks shall have the Temporalties during the Vacation; now if the Advowson happen void during the Vacation, the Monks shall present to the same. F. N. B. 33. (U) cites Mich. 30 E. 3.

See Recusant.

6. By the Statute 3 Jac. 1. cap. 5. a *Popish Recusant Convict* is disabled to present &c.

(F. a. 2) Who shall present *in respect of Estate.*

S. P. If he presents within the 6 Months. Br. Quare Impedit. pl. 67. cites 38 E. 3. 35. S. C. — *So* of *Tenant pur Auter vie*, or * *Termor*, where their Interest determines after Voidance and before Presentation. Ibid. Per Finch. —— Br. Quare Impedit. pl. 67. cites S. C. and P. —* S. P. Br. Presentation. pl. 22. cites it as said elsewhere --† It should be (38) E. 3. 36.

1. WHERE a *Man has a Ward*, and *Advowson voids*, and the *Heir comes to full Age before Presentation*, yet the Guardian shall have the Presentation. Br. Presentation. pl. 18. cites † 18 E. 3. 36.

Where a Man grants the next Presentation,

2. Where a Man *grants Proximam Præsentationem*, and *dies*, his *Heir being in Ward of the King*, and the *Church voids*, the King shall have the Presentation,

Preſentation, and not the Grantee; Per Wilby. Brooke ſays, Quære inde, becauſe it ſeems to be contrary to Law. Br. Preſentation. pl. 19. cites 21 E. 3. 38.

ſentation of an Advowſon, if the *Grantor dies*, and the *Church voids*, the Grantee ſhall have the Preſentation, and not the Lord in Chivalry, of whom the Land and Advowſon is held, by reaſon of the Cuſtody of the Heir within Age; for the Lord ſhall not ouſt the Grantee, Termor, nor ſuch like. Br. Quare Impedit. pl. 121. cites 5 H. 7. 36. by the beſt Opinion.

3. It is good Title for the *Lord* to preſent *where the Heir enters for Condition deſcended*, he being *within Age*; for he is in as Heir, and ſhall be in Ward; and the Lord ſhall preſent. Admitted without Argument. Br. Quare Impedit. pl. 106. cites 39 E. 3. 37.

4. In Quare Impedit, if *Baron* is *ſeiſed of an Advowſon in Jure Uxoris, as in Dower*, and the *Church voids*, the *Feme dies before Diſturbance*, and after the Baron is diſturb'd, he ſhall have this Preſentation. Per Thirn, quod non Negatur. Br. Preſentation. pl. 15. cites 54 H. 4. 12.

S. P. Per Finch. Br. Preſentation. pl. 18 cites 18 E. 3. 36. — S. P. Co. Litt. 120. — S. P. That if the Feme dies without Iſſue, ſo that the Baron is not intitled to be Tenant by the Courteſy, yet he ſhall have the Preſentation. Per Newton. Br. Preſentation. pl. 22. cites 21 H. 6. 56. — Watſ. Comp. Inc. 8vo. 121. cap. 9. ſays, that tho' the Wife never did preſent to the Church, but died before it voided; the Right of preſenting during the Husband's Life is lodged in him as Tenant by the Curteſy, tho' his Wife had but a Seiſin in Law, becauſe he could by no Induſtry attain to any other Seiſin, cites 1 Inſt. 29. a.

5. Where *two Churches are united*, there each Patron in his Turn ſhall have Quare Impedit, *De medietate Advocationis*; for the Advowſon is ſever'd in Right and in Poſſeſſion there; But *contra between Coparceners*, Tenants in Common, and the like; for there the Advowſon is not ſever'd, and therefore the Writ ſhall be there *De Advocatione Medietatis*. Br. Quare Impedit. pl. 107. cites 14 H. 6. 15.

6. If a Parſon be *outlaw'd in* Writ of *Treſpaſs*, *the Church being void*, the King ſhall have the Preſentation; which is adjudg'd Anno 22. inter Aſſ. Br. Preſentation. pl. 22. cites 21 H. 6. 56. Per Newton.

7. In Quare Impedit the Caſe was, That *a Prior ſeiſed of* 3 *Acres and Advowſon Appendant*, and the *Maſter of the College ſeiſed of* 2 *Chambers*, he *exchanged by Indenture*, and the *Prior enter'd* into the Chambers; *but the Maſter died, and did not enter* into the 3 Acres, and his *Succeſſor brought Quare Impedit* at the Avoidance. And Per Danby clearly, a Man cannot preſent to the Advowſon Appendant, if he has not the Land to which &c. But Per Moyle, the Seiſin Tempore Vacationis is not traverſable. And ſo Littleton and Moyle againſt Danby and Needham &c. Br. Preſentation. pl. 30. cites 9 E. 4. 38.

8. In Quare Impedit it was agreed, That if a Man be *ſeiſed of an Advowſon in Fee*, and the *Church voids*, and he *dies*, the Executor ſhall have the Preſentation and not the Heir. Br. Preſentation pl. 34. cites * 21. H. 7. 22.

Contra. 3 Lev. 47. per tot. Cur. For all is done in one Inſtant, the Deſcent to the Heir, and the Falling of the Avoidance to the Executor; And where *two Titles concur in an Inſtant the moſt ancient ſhall be preferred*, As in Caſe of Jointenants, the one deviſes his Part, the Title of the Deviſee, and of the Survivor fall in one Inſtant, the Title of the Survivor being the moſt ancient Right ſhall be preferred. Mich. 33 Car. 2. C. B. Holt v. the Biſhop of Winton. ——

* It ſhould be 21 H. 7. 21.

The abridger totally miſtakes the case in Leviny; the case which is very consistent with Brooke; for in the case in Lev. the incumbent himself was seized of the advowson, & that gave occa. to the question between his heir & successor. The same person being patron & incumbent was the gist of the case.

9. A *Manor*, to which an *Advowſon* was *appendant came to Queen Mary by* an *Attainder of* the *Patron* the Earl of Northampton, who had only an Eſtate for Life in it, and *ſhe made a Leaſe* thereof to R. & W. for forty Years, if the Earl ſhould ſo long live. The *Church became void*, and *one* Twiniko, *who claimed not under the Leaſe* to R. & W. *preſented* M. who was inſtituted and inducted, all which was pleaded, *but the Manor being ſettled in Remainder* in Fee *to H. 8. Queen Eliz. as Heir* to him, *preſented upon his Avoidance*; But adjudged againſt her, becauſe there is not a bare Uſurpation pleaded againſt the Queen, but alſo an Eſtate,

ſtate, viz. a Leaſe for Years in the ſaid Advowſon derived from Q. Mary, and that the Avoidance, whereupon the Action is brought falleth within the ſaid Term, ſo as the Queen, who is Plaintiff, is encountered with the Leaſe of her Anceſtor, againſt which ſhe cannot make Title to preſent without ſpecial Matter; Wherefore Judgment was given againſt the Queen. Le. 44. pl. 58. Mich. 28 & 29 Eliz. The Queen v. Middleton.

10. A *Manor*, to which an Advowſon is appendant, is *extended* on a Statute Merchant. Per Cur. if it become void during the Conuſee's Eſtate the *Conuſee* may preſent. Owen. 49. Mich. 32 & 33 Eliz. Arundel v. The Biſhop of Glouceſter.

11. If a *Man, ſeiſed of an Advowſon*, takes a Wife, and *dies, the Heir ſhall have two Preſentments*, and *the Wife the third*; yea, *tho' the Husband in his Life*-Time *had granted* away *the third* Turn. Watſ. Comp. Inc. 8vo. 122. cap. 9. cites 2 And. 173. Williams v. the Biſhop of Lincoln and Bailiffs of Bedford & D. 35. b. 28. H. 8.

12. If a *Villein purchaſes an Advowſon* his *Lord ſhall preſent*; Becauſe the Lord upon ſuch Purchaſe of the Villein may claim the Inheritance of the Advowſon, and upon ſuch Claim the Intereſt thereof ſhall be veſted in him, and then the Lord in his own Right ſhall preſent to an Avoidance. Watſ. Comp. Inc. 8vo. 179. cap. 11. cites Parſon's Law, cap. 10. fol. 75.

(F. a. 3) Who ſhall preſent in reſpect of Eſtate *Mortgagor or Mortgagee*.

S. P. admitted by Lord Chancellor King, and by the Counſel of both Sides, 2 Wms's Rep 404. Hill. 1726. cited the Caſe of Wood and Henchman v. Sir Tho. Stanley——and Serjeant Selby's Caſe—9 Mod. 2. S. P. admitted Arg. Paſch. 1722. in the Caſe of Hungerford v. Clay.——*But* where *a Mortgage was of an Advowſon only without more*, which the Mortgagor was poſſeſſed for a Term of 99 Years, and in the Mortgage was a *Covenant, that on every Avoidance the Mortgagee ſhould preſent* it was inſiſted that this differed from a Mortgage of an Advowſon appendant, tho' even in that Caſe ſuch Covenant would be good; and the Court ſeemed to incline thereto, tho' as to that it gave no Opinion, there being another Point on which it decreed a Diſmiſſion. 2 Wms's Rep 404. Hill. 1726. Gardiner v. Griffith. — Upon the Plaintiff's Petition Lord Sommers ordered the Defendant to revoke his Preſentation, and to preſent ſuch Parſon as the Mortgagor, or his *Vendee* (For he had contracted to ſell) ſhould appoint. Ch. Prec. 71. Jory v. Cox.

It was ordered that Mortgagee permit *Mortgagor to bring Quare Impedit in Mortgagees Name.* 3 Lev. 115. Stanton v. Barker cited in Walker and Hammerſly's Caſe. —— 2 Vern. 450. S. P. though the *Mortgagee was in Poſſeſſion.* Attorney-General v. Hesketh & al.

Aſſignee of the King's Title by reaſon of *Simony in the Mortgagor* brought a Quare Impedit, and then a Bill in Chancery that the Mortgage may not be ſet up nor given in Evidence againſt him at Law and Lord Wright decreed the ſame. Ch. Prec. 214. Attorney General for Hindley v. Sudall. Heskith & al.

1. B. *Mortgaged* to A. *the Manor of C.* to which an Advowſon is *appendant* A. brings Bill to Foreclоſe. The Church voids. Mortgagor (B) moved for Injunction to ſtay Proceedings in a Quare Impedit brought by A. Per Cur. Tho' B. has *No Bill*, yet being ready, and offering to pay the Principal, Intereſt and Coſts, if A. will not accept his Money, Intereſt ſhall ceaſe, and an *Injunction* ſhall be granted as to the *Quare Impedit*; For A. can make no Profit by preſenting, nor Account for any Value in reſpect thereof to ſink his Debt, and A. therefore in that Caſe, until a Foreclоſure, is but in Nature of a Truſtee for B. 2 Vern. R. 401. Mich. 1700. Amhurſt v. Dawling.

2. A Mortgagee of an Advowon held for Years, without any other Thing joined with it in the Mortgage, by virtue of an Agreement expreſſed in the Mortgage Deed for that Purpoſe preſented a Clerk on an Avoidance; The Mortgagor brought a *Bill in Chancery ſeven Months after the Inſtitution to compel the Clerk to reſign*; But Lord C. King diſmiſſed the Bill, declaring, That as a Quare Impedit was confined to ſix Months after the laſt Incumbent's Death, ſo ought a Bill to

to be limited to the ſame Time; But had a Quare Impedit been brought within the 6 Months, and the Bill been preferred after the 6 Months, the Court might, on a proper Caſe, give Directions in Aid of the Quare Impedit, that the Mortgage ſhould not given in Evidence. 2 Wms's. Rep. 404. Hill 726. Gardiner v. Griffith.

3. It ſeems, That if *one*, who is *ſeiſed* in Fee *of an Advowſon*, *mortgages the ſame* for a Sum of Money, and the Money not being paid, *the Grant becomes* Abſolute, *and then the Church voids*; *if* during the Avoidance the Money being paid, and the Advowſon reconvey'd, the *Mortgagor gets the Clerk inſtituted* to the void Church, the *Mortgagee is without* all *Remedy*, tho' the void Turn was in him, and could not paſs by his Reconveyance of the Advowſon. Wats. Comp. Inc. 8vo. 437. cap. 22.

(G.a) Preſentment to the Church. By *Coparceners*, *Tenants in Common* or *Jointenants*. *Who* ſhall preſent *of Common Right*.

1. **Of Common Right, if they cant agree** the Eldeſt ſhall preſent **at** the 1ſt Voidance, **and the 2d Coparcener at the 2d. and ſo on** every one in Order. 17 E. 3. 30. 37. b. **Adjudged.** * 21. E. 3. 37. b. 38. **M.** 13. E. 1. **B. Rot.** 3. 12. **H.** 7. **Kell.** 1. **D.** 35. **H.** 8. 55. 5. **Co. Litt.** 116. (f) 186. b. (i)

S. P. 3 Rep. 22. b. Arg. in Walker's Caſe; But ſays that this is not in reſpect of her Perſon only, but as it is annexed to her Eſtate; For as it is agreed 5 H. 5. 10. her Baron, who is Tenant by the Curteſy ſhall have it. —— * Br. Preſentation, pl. 19. cites S. C. —— S. P. Br Preſentation, pl 53. cites F. N. B. 34. — S. P. ibid. pl. 59. cites Doct. & Stud. lib. 2. cap. 26—— S. P. Br. Quare Impedit. pl. 12.

2. Alſo this Privilege **given to the Eldeſt** ſhall go to her * Iſſue and † aſſignee. **Co. Litt.** 166. b. (f) 186. b. (i)

Quære as to the *Aſſignee before any Preſentation* by the Eldeſt. Hill. 18. H. 7. Kell. 49. — * See S. P. admitted Br. Preſentation, pl. 35. cites 38. H. 6. 9.— There is a Diverſity between the Caſe of a Partition by Deed by Act of the Party, For there the Privilege of Election of the Eldeſt Daughter ſhall not deſcend to her Iſſue, and Where the Law gives the Eldeſt any Privilege without her Act, there, that Privilege ſhall deſcend. Co. Litt. 166. b. —— †Br. Preſentation, pl. 27. cites 24 E. 3. 52. & Monſtrans de Faits. pl. 65. cites S. C.

3. So Tenant by the Curteſy of the Eldeſt **Siſter ſhall have the ſame Privilege. Co. Litt.** 186. b. (f) 166. b. (i)

See pl. 1. in the Notes. Br. Quare Impedit. pl. 62. S. P. cites 5. H. 5. 10.

4. If *three Jointenants* are of an Advowſon, and the one preſents, the Ordinary is not bound to receive him; but if he does, the other has no Remedy; For two cannot have Quare Impedit againſt the third; Contra of Coparceners. Br. Quare Impedit. pl. 128. cites 6. E 4. 10.

5. A *Fine* was levied *of a Manor*, unto which an Advowſon was appendant, wherein a *third Part was rendered back to A.* for Life with divers Remainders over, and *ſo of the other two Parts*, *with the Advowſon of every 3d Part as aforeſaid*; If they cannot agree to preſent, a Lapſe ſhall incur; They are all Tenants in common, and being *firſt named*, or laſt named, is of no Privilege or Prejudice; For being *by one Deed* it ſhall paſs Uno Flatu. Arg. Godb. 128. cites 45. E. 3.

Br. Fines pl. 24 cites 45 E. 3. 12.

6. A *Grant* was made *of the next Preſentation to* Sir Godfrey Foliamb, and *to four* others, & eorum cuilibet conjunctim & diviſim, Hæredibus, Executoribus & Aſſignatis ſuis, and afterwards the Church became void, and Sir Godfrey preſented one of the other four Grantees; and adjudged, That the *Preſentation by one alone* was good. Mod. 4. Trin. 31. H. 8. Sir Godfrey Foliamb's Caſe.

And. pl. 2. S. C. adjudged accordingly—4 Le. 119 pl. 240. S. C. adjudged accordingly by the Name of Sir William Hollis's Caſe—— Bendl 24. pl. 40. S. C. but mentions no Judgment —— See (M. a) pl. 2. S. C.——In Caſe of Berry v. Perry 3 Buls. a 66. Coke Ch. J. Arg. ſays it was reſolved, that this Grant was not good, becauſe an Intereſt cannot be divided, and ſays that with this agrees 14 Eliz. D. 304 pl. 54.

7. Two *Siſters Coparceners* of an Advowſon, *married*; the *younger* Siſter *died*, and her Husband was *Tenant by the Curteſy*. The Church voided; the Clerk of the Husband of the eldeſt Siſter was received; And afterwards, the Church became void again, and the ſaid Husband *of the youngeſt* Siſter *preſented*, but being diſturbed, brought a Quare Impedit, as Tenant by the Curteſy *in Jure ſecundo*, and had Judgment. Moor. 224. pl. 304. Paſch. 28. Eliz. Beverley v. Archbiſhop of Canterbury.

8. The next Preſentation was granted to 2 and *before the next Avoidance one gave a Releaſe to the other*; then the Incumbent died, and *one* of them *preſented alone*, and being diſturbed, brought a Quare Impedit, and had Judgment; It was aſſigned for Error, becauſe one of the Grantees had brought this Quare Impedit in his own Name alone; But adjudged maintainable, becauſe the Releaſe was made before the Church was void, and this Judgment was affirmed in Error. Moor 467. pl. 664. Trin. 9 Eliz. Rot. 1038. Lewes v. Bennet.

(H a.) Preſentment to the Church. By Coparceners *by Compoſition*. *How* the Compoſition being.

1. **If the Compoſition** be againſt Common Right **it ſhall** not bind without Deed. 17. E. 3. 38. b. **Adjudged.**

2. As **after the Eldeſt has preſented if the Compoſition be** that the Eldeſt ſhall preſent again and then the 2d, **and ſo the others in Turn, This ſhall not bind without Deed being againſt Common Right; For de Jure the 2d is to preſent.** 17. E. 3. 38. b. **Adjudged.**

S. P. And if the Defendant will demur for not ſhewing of the Compoſition, and this is adjudged againſt him, this is *peremptory*, and the Plaintiff ſhall recover; For the Deed of Compoſition belongs to A. B. and not to the Plaintiff, who has only a Preſentation, as held there by Thorp Juſtice, and the beſt Opinion. Br. Peremptory, pl 25. cites S. C.

3. In *Quare Impedit*; the Plaintiff makes Title, That *Compoſition was* had *between the Defendant and A. B. to preſent by Turn*, and the Defendant preſented, and *A. B. granted* to us, our Heirs, and Aſſigns, *the next Preſentation by the Deed, which he ſhewed*, and ſo it belonged to him to preſent, the other prayed that the * [Plaintiff] ſhall ſhew the Compoſition; and becauſe he does not claim but one Preſentation, and ſo the [Deed of] *Compoſition belongs to the Grantor*, and not to the Plaintiff, therefore the Opinion was, That he ſhall not be compelled to ſhew it, by which the Defendant paſſed over, and pleaded a Releaſe of A. B. Br. Monſtrans, pl. 72. cites 39 E. 3. 37.

* In Brook it is [Defendant]

And Holt Ch. J. ſaid, That a Compoſition *may be* either *by Record*, by *Deed*, *or* by *Parol*. If *either Privies in Blood* (as Coparcerners) *or Strangers* in Blood (as Tenants in Common, or Jointenants) *agree by Record to preſent by Turns*, and *one preſents*, the

4. Error in Quare Impedit; Plaintiff counts that *A* & *B.* ſeiſed as Jointenants of the Advowſon in Groſs, *by Indenture agreed to hold as Tenants in Common*, and that they and their reſpective Heirs ſhould *preſent by Turns*, and ſhews ſeveral Preſentations alternately, and that *A. died*, and *his Moiety deſcended to C.* and made Title by *grant of the next Preſentation by C. to D.* his Executors, Adminiſtrators, and Aſſigns, in whoſe Life the Church became void, and that *D. made M. Executor*, and died, and it belonged to him as Executor to preſent &c. The Biſhop claimed Title by Lapſe; The Plaintiff replied, That D. his Teſtator preſented one Symms within ſix Months, and the Biſhop refuſed him; Defendant rejoined, that he gave him 3 Days to prepare for Examination, and he never came; and traverſed, that he refuſed Symms at the Preſentation of the Teſtator; and upon Iſſue taken upon this Traverſe, Verdict and Judgment was for the Plaintiff; and now it was inſiſted, that Plaintiff had made no Title, becauſe the *Agreement to preſent by Turns* did not operate as a Partition, and ſever the Right, but merely as a Compoſi-

tion

tion or Agreement, which being broken, the Plaintiff has a proper Remedy by Action; But adjudged, That it *ſevered the Right of Preſentation.* 1 Salk. 43. Mich. 11 W. 3. B. R. The Biſhop of Salisbury v. Phillips.

other is not, by the Uſurpation, put to a Quare Impedit; and this, whether the Preſentation be by one privy to the Agreement, or by a Stranger. —— 2dly, If either Privies in Blood (as Parceners) or Strangers (as Tenants in Common or Jointenants) agree *by Deed* to preſent by Turns the Compoſition is good, and the Plaintiff need not in Quare Impedit, mention the Compoſition, it being once executed; And this ſhews that the Inheritance is ſevered, and that a ſeparate Intereſt is veſted in each of them to preſent by Turns. 3dly, *by Parol*, for ſo a Compoſition may be *between Parceners*; But between Strangers in Blood Compoſition cannot be without Deed, 1 Salk. 43. in the Caſe of the Biſhop of Salisbury v. Philips. —— Carth. 505. S. C. and there held That by the Agreement to preſent by Turns, being executed on both Sides, there was a Partition of the Inheritance of the Advowſon —— So if 3 Tenants in Common agree to preſent by Turn, and every one has once ſo preſented, it is not neceſſary in Quare Impedit, for any of them to ſhew the Compoſition, becauſe it has been executed once; Otherwiſe, if not executed, as was held by Shelly, Fitzherbert, and many of the Serjeants, Dy. 29. pl. 194. Hill. 28 H. 8.—Wats. Comp. Inc. 8vo. 117. cap. 8. cites S. C.

5. 7 *Ann. cap* 18. Enacts that *if Coparceners or Jointenants, or Tenants in Common be ſeiſed of any Eſtate of Inheritance in the Advowſon of any Church or Vicarage, or other Eccleſiaſtical Promotion, and Partition is or ſhall be made between them to preſent by Turns, that thereupon every one ſhall be taken and adjudged to be ſeiſed of his or her ſeparate Part of the Advowſon to preſent in his or her Turn; As if there be two, and they make ſuch Partition, each ſhall be ſaid to be ſeiſed, the one of the one Moiety to preſent in the firſt Turn, the other of the other Moiety to preſent in the ſecond Turn; in like Manner if there be three, four, or more, every one ſhall be ſaid to be ſeiſed of his or her Part, and to preſent in his or her Turn.*

This Statute does not *extend* where the Plaintiff has but *one Turn*; for then tho' a Stranger had uſurp'd in their Turn they ſhould preſent to the next Avoidance in Prejudice to the others Right; therefore the Statute *intends ſuch Patrons only as have a continuing Right* of Patronage, and to remedy the Caſes not within the *Stat. W.* 2. Gibb. 253. in the Caſe of the Biſhop of London and Lewen v. the Mercers Company.

(I. a) By *Aſſignee.*

See (K.c)

1. IF an Advowſon be allotted in Chancery to the youngeſt Coparcener, ſhe ſhall preſent and maintain Quare Impedit againſt the others 'till it be defeated. 17 E. 3. 38.

This is 17 E. 3. 38 a. at the firſt Line &c. of the Page, and in pl. 10. And it is ſo ſaid per Seton, That if the Advowſon was allotted to the youngeſt &c. in Chancery, non eſt Dubium, that ſhe *ſhall not dereign*, by force of this Aſſignment, the firſt Preſentment againſt the others by Quare Impedit.

2. If three Coparceners of a Manor, to which an Advowſon is Appendant, make Compoſition to preſent by Turns, and the Eldeſt uſurps in the Turns of the Middlemoſt and Youngeſt, and after uſurps again in the Turn of the Middlemoſt, yet the youngeſt may preſent in her next Turn. 30 E. 3. 14. b.

Sir Richard Talbot v. the Biſhop of Hereford. Ibid. 14 b. 15. but not adjudg'd. Fitzh. Abr. Quare Impedit. pl. 39. cites 6 E. 3. 52. S P. Per Brian.

3. So if Coparceners make Compoſition to preſent by Turn, and the one uſurps in the Turn of the other, yet ſhe upon whom the uſurpation was * may preſent upon the Compoſition in her next Turn. For the Uſurpation between Coparceners is an Uſurpation but for the ſame Turn uſurp'd, and does not put the other to her Writ of Right. F. N. 34. F. 22 E. 4. 9. See the Statute W. 2. cap. 5.

* Fol. 347.

awarded accordingly. —— 4 Le. 222, 223. pl. 356. cites S. C.

4. If a Partition be made to one Coparcener, and an Advowſon aſſign'd to her in Chancery, the others being within Age, yet at their full Age they may preſent by Compoſition, or preſent by Turn as if no Partition had been made. 17 E. 3. 37. b. 30. b. Adjudged.

This is in the Caſe of the King v. Frevil. Ibid. 30. b. Per Pole, and 31. b Per Hill.

5. *Two Coparceners and a Stranger*, who pretended a Right to the Eſtate and an Advowſon, *agreed by Indentures* mutually executed, that each of them ſhould preſent by *Turns until* ſuch Time as a Partition could be made. An Act of Parliament confirms the Indenture, and enacts, That every Agreement therein contained ſhall ſtand, and that all the reſt of the Lands not particularly named, and otherwiſe diſpoſed of by the ſaid Indenture, ſhould be held by theſe three in Common; The *1ſt in Turn grants the next Avoidance* (the Church being full) to the Plaintiff, and Judgment for him; for 'twas agreed, that there ſhould be a Preſentation by Turns, and therefore for one Turn each had a Right to the whole Advowſon by reaſon of the *Act of Parliament which confirm'd the Agreement*, and thereby an *Intereſt is ſettled in each of them 'till Partition* made; but this Agreement would have veſted no Intereſt in either of them without an Act of Parliament to corroborate it; therefore there had been no *Remedy* upon it but by *Action of Covenant*. 2 Mod. 97. Trin. 28 Car. 2. Croſſman v. Churchill.

(K. a) Preſentment to the Church. By Coparceners *or others*, where it is to be made *by Turn*. *What* Preſentment *ſhall ſerve* for a Turn.

See (C a) pl. 7. in the Notes there. —Several thought the Eldeſt ſhould have the Preſentment if the youngeſt would not join with her; for this ſhall be ſaid the Commencement of her Turn, becauſe ſhe had not the Turn at the laſt Avoidance, that Preſentment being made in the Name of both; Sed alii e contra. D. 55 pl 5. Paſch. 34 & 35 H. 8. Archdeacon Carew's Caſe.

1. IF an Advowſon deſcends to two Coparceners, **the** one being within Age and in Ward, **and the** Guardian marries with the Eldeſt, **and after the** Church voids, **and the** Guardian preſents in the Name of both Siſters; **This ſhall not ſerve for any Turn to the Eldeſt; but at the next Avoidance if they cannot agree in Preſentment, the Eldeſt ſhall preſent alone, as if no Preſentment had been made after the Deſcent to them.** D. 35. H. 8. 55. 5. Quære.

* As for Incontinency or other ſuch Cauſe. Cro. E. 687. Trin. 41 Eliz. C. B. S. C. by Name of Windſor v. Archbiſhop of Canterbury, Loveday and Fletcher. — S.C. Mo. 558. pl. 760. Paſch. 40 Eliz. — *So* if Grantee of the next Avoidance preſents one who is *admitted and inſtituted*, but dies before Induction, the Grantee ſhall not preſent again; but if he *dies before Inſtitution*, 'tis otherwiſe. Arg. Mo. 443. pl. 609. Hill. 38 Eliz, in the Caſe of Robins v. Gerrard. — S. P. Arg. Goldsb. 163 ſays, It was ſo adjudg'd in Colſhill's Caſe — S. P. Per Gawdy, J. and agreed per Fenner, J. and Popham Ch. J. Goldsb. 165. in the Caſe of Robins v. Prince.

2. **If two have Title to preſent by Turn, and** the one preſents, and his Clerk admitted and inſtituted &c. **and** after is deprived for * Crime **or Hereſy, or any other Cauſe, yet he ſhall not preſent again; but this ſhall ſerve for a Turn, becauſe the Church was full, 'till the Sentence Declaratory comes.** **Co. 5.** *Windſor* 102.

See (L.a) pl. 6. — S. P. by Bromley J. Roll. R. 467. cites 5 Rep.

3. **So if a Man, who has a Turn,** preſents one who is merely a Lay Perſon, **and he** is admitted and inſtituted &c. and **it is declared by** Sentence, that he is incapable, **and therefore void** ab Initio; **yet becauſe the Church was full 'till the Sentence Declaratory comes, tho' this ſhall** relate **to ſome Purpoſes, it ſhall be for a Turn.** **Co. 5.** *Windſor* 102.

Cro. E. 687. Trin. 41 Eliz. C. B. S. C. — Mo. 558. Loveden v. Wind-

4. So **if A. who has one Turn, preſents B. who is admitted and inſtituted &c. and after he** is deprived by Sentence; **whereupon** C. who has the 2d Turn, preſents D. who is admitted and inſtituted &c. and after he is deprived, and the firſt Sentence **of Deprivation of B.** declared to be void, and he reſtored, **and after** D. dies, **and then B.** dies

dies, C. ſhall preſent in his Turn; for tho' D. was Parſon for the Time to all Purpoſes during the firſt Deprivation, and B. was not Incumbent, yet when the 2d Sentence comes, B. was Incumbent again by Force of the firſt Preſentment, Inſtitution, and Induction, and needed not a new Inſtitution &c. And ſo B. died Incumbent by Force of the firſt Preſentment in the firſt Turn. Co. 5. *Windſor* 102. Adjudged.

for and Hitch; becauſe the Sentence Declaratory for the Reſtitution made a Nullity in the Deprivation of B. and ſo utterly defeats the Incumbency of D. as if he never had been preſented.

5. But in the ſaid Caſe, if D. had died Incumbent before the ſecond Sentence, or if the firſt Sentence had not been revers'd; then this ſhould ſerve for the Turn of C. who preſented him. Co. 5. *Windſor* 102 b. Cro. E 686. — Mo. 558. pl. 760.

6. If a Man preſents B. who is admitted, inſtituted, and inducted, but he has not ſubſcribed the Articles &c. according to the Statute of 13 El. by which the Admiſſion, Inſtitution, and Induction are void, it ſhall not ſerve for a Turn; becauſe the Admiſſion, Inſtitution, and Induction, are merely void by the Statute. Co. 5. *Windſor* 102. b. By his not reading the Articles he was never lawful Parſon of the Church, by reaſon of the Statute of 13 Eliz. D. 377. b. pl 31. Mich. 23 & 24 Eliz. Anon. —— Ibid. Marg. ſays, It was adjudg'd, that the Church is void, ipſo facto, without Deprivation. cites Trin. 48 Eliz. B. R. Baker v. Brent. —— Hob. 168. cites S. C. —— S. C. cited, and S. P. held by Vaughan Ch. J. Vaugh. 133. Hill. 22 & 23 Car. 2. in the Caſe of Shute v. Eigden. — 2 Jo 19. S. C. And there Vaughan Ch J. took a Diverſity between *not Reading* the Articles and *not Subſcribing* them; for the Statute prohibits Admiſſion before Subſcription, and makes the Admiſſion, Inſtitution, and Induction void.

7. Where the *one loſes his Turn by Lapſe*, this ſhall ſtand for his Turn; and at the next Avoidance, the other ſhall have his Turn again; Quod nota. Br. Preſentation. pl. 26. *As* in Quare Impedit by J. Prebendary of the Church of L. of a Voidance of a Vicarage againſt the Biſhop of E. and H. and *counted that he had one Prebend* as above, *and H. had ſuch another, and they are ſeiſed of thoſe Prebends in the Church of L. to which* the *Vicarage is appendant to preſent by Turn*; *and* that *J. the Plaintiff preſented D. his Clerk* &c. *who was received, by whoſe Death* &c. *the Church voided, and the Biſhop in Default of H. made Collation to one G.* &c. *and* made *Induction in Right of H. by whoſe Death the Vicarage is now void*; ſo it belong'd to him to preſent, and the Defendant diſturb'd him &c. and a good Count. Br. Preſentation. pl. 26. cites 24 E. 3. 26.

8. A Man ſeiſed of a *Manor with Advowſon Appendant* had *Iſſue four Daughters* and died, and *they made Partition, and that each preſent by Turn in Degrees as their Age was*, by which the *Eldeſt commenced* &c. *and her Clerk was in*, and after *the Eldeſt died, her Heir within Age, and found by Office for the King*, and he ſeiſed the Ward, and after the *Church voided again*, and the *King preſented in the Turn of the ſecond Daughter*; And per Catesby, the King preſented in Right of the Heir, and therefore his Preſentment in the Turn of the ſecond Daughter does not put her to her Writ of Right of Advowſon. But to this Brian and Choke were ſtrongly Contra, and that this is Uſurpation; For there is *no Privity* of the Partition in the King, and *this Preſentation is in Jure Regis Proprio as Lord*, and never ſhall make Title to the Heir in Quare Impedit. Br. Quare Impedit, pl. 139. cites 22 E. 4. 8.

9. Where *one Parcener preſents in the Turn of her Coparcener*, this does not put her to her Writ of Right of Advowſon as Uſurpation done by a Stranger ſhall do, by reaſon of the Privity, ſo that ſhe loſes nothing by this Turn, and ſhall have her Turn again when it comes to her Turn again; Per Catesby and Brian. Br. Quare Impedit, pl. 132. cites 22 E. 4. 8. *So of Grants* of Coparceners. Ibid. —— Where *ſeveral Patrons* are, and *one uſurps* upon the other, that other ſhall not preſent to the next Avoidance, but muſt wait till his Turn comes round. Gibb. 253. Paſch. 4 Geo. 2. B. R. held ſo in the Caſe of the Biſhop of London and Lewen v. the Mercer's Company.

10. In Quare Impedit; *four Manors deſcended to four Daughters*, and an *Advowſon was appendant to one* Manor, and *they made Partition of all ex-*

cept the Advowſon, and ſo that each Daughter had a Manor, and *nothing determined of the Advowſon by Compoſition or otherwiſe*, and after the Church voided, and the *eldeſt Daughter preſented*, and at another Voidance the *ſecond Daughter preſented*, and at a third Avoidance the *Stranger preſented*, and after the Incumbent died, and the *fourth preſented*, and well, by the Opinion of the Court; For the Fourth ſhall not loſe her Turn by the Uſurpation of a Stranger ſuffered by the third Daughter. Br. Quare Impedit, pl. 118. cites 2 H. 7. 4.

11. If the *King* upon his *Promotion of the Incumbent* to a Biſhoprick does not take Benefit of the firſt Avoidance, but *ſuffers a Stranger to preſent, and the Preſentee dies*, he ſhall not have his Prerogative to preſent to the ſecond Avoidance. Cro. E. 790. Mich. 42 & 43 Eliz. C. B. Baſſet v. Gee.

Ow. 131. Mich. 42 & 43 Eliz. C. B. S. C.

12. A. and B. ſeiſed in Fee of *every other Turn*; A. preſented; then B. preſented in his Turn, and after Induction *his Clerk is deprived*, but *no Notice is given*. The *Biſhop collates*. A. *grants his Fee to J. S.* The *Collatee dies*. It is now B's Turn. For A. before his Grant to J. S. might have removed the Collatee for want of Notice; but he dying Incumbent, A's Turn is ſerved. But after A's Grant to J. S. neither A. nor J. S. could preſent, and the Collation was good againſt all but the very Patron, who, after the Grant, could not have Action, but he has deſtroyed it by his Grant, and ſo none can have it. Cro. E. 811. Hill. 43 Eliz. C. B. Leak v. the Biſhop of Coventry and Babington.

13. Where the *King has Title* by Lapſe and preſents, and his Preſentee is inſtituted, yet the King may revoke his Preſentation and preſent another, *his Turn not* being *ſerved* by Inſtitution only *before Induction*. Watſ. Comp. Inc. 197. cap. 12. cites 1 Le. 156. Trin. 32 Eliz. Wright v. the Biſhop of Norwich.

Fol. 348.

(L. a) Preſentment to the Church. *What Perſons* may be *Preſented*.

Br. Preſentation, pl. 2. cites S. C.—Br. Abbe, pl. 22. cites S. C.———Br. Incumbent, pl. 2. cites S. C.

1. AN Abbot **may be preſented to a Church; (for he was capable of an Appropriation by which he was perpetually Parſon imparſonee, and had** Curam Animarum.) 34 H. 6. 15.

Br. Preſentation, pl. 2. cites S. C.

2. A Maſter of a College **is not preſentable to a Parſonage.** 34 H. 6. 15.

———Br. Abbe, pl. 22. cites S. C.——— Br. Incumbent, pl. 2. cites S. C.——— If a Corporation conſiſts of Maſter and Confreres, and the *Maſter and Confreres preſent the Maſter*, it is void; For the Preſentor and Preſentee are one and the ſame Perſon. Br. Preſentation, pl. 23. cites 14 H. 8. 2. per Fitz-James.———And per Moore J. The Maſter or Head of the Corporation cannot be ſevered from the Corporation, but other of the Commonalty may; For the Maſter and Confreres, or the Dean and Chapter, *may preſent one of the Confreres*, or one of the Chapter; For he is not a perfect Body without the Head; But he is a perfect Body if the Maſter, or Head, and the greater Part of the Commonalty aſſent. Br. Preſentation, pl. 23. cites 14 H. 8. 2.——— Br. Quare Impedit, pl. 86. cites 14 H. 8. 2. 29. ———Watſ. Comp Inc. 8vo. 205, 206. cap. 13. cites S. C. ———Watſ Comp. Inc. 8vo 392. cap. 20. cites S. C. and adds, Quære, whether the Inſtitution and Induction in ſuch Caſe be merely void, ſo that Lapſe may run from the Time that the Church became firſt void? And ſays, he conceives it is not ſo, but the Dean and Chapter may well preſent one of their Chapter, or any Corporation, one of their Members, and cites 3 Bulſ. 43. Trin. 13 Jac. Harris v. Auſtin.———It has been held, that when the Maſters and Brothers of an Hoſpital did preſent the Maſter, and the Maſter and Brothers did bring a Quare Impedit againſt the Maſter by a ſtrange Name, that the Writ did well lie, and that they ſhould recover, the Preſentment being void. Watſ. Comp. Inc. 8vo. 515. cap. 26. cites 12 H. 8. 12.

3. The

3. The ſame Law of a Dean and Chapter, (though by Corruption they were capable of an Appropriation, and a Vicar made to have Curam Animarum for them. Com. 497.) 34 H. 6. 15.

Br. Abbe, pl. 22. cites S.C.--Br. Incumbent, pl. 2. cites S. C.

4. It ſeems, that an Alien, who is a Miniſter, may be preſented to a Church, though an Alien cannot have Poſſeſſions of Franktenement here, becauſe by Intendment they will adhere to their Country and againſt us in Time of War, and tranſport the Treaſure of the Realm out of the Realm, yet this is not intended of Spiritual Men; and this was the Reaſon that anciently it was uſual for Aliens to have Spiritual Promotions here, and Priors Aliens had many Poſſeſſions here, and were Parſons appropriate.

As to what Roll ſays, that the ſuppoſed Innocence of Spiritual Aliens, from the intended Inconveniencies, might come to the Nation by other Aliens, if they were allowed to enjoy Eſtate here, was the Reaſon they were ſuffered to enjoy Eccleſiaſtical Benefices here, could not ſure be the Reaſon, but rather the Pope's Uſurpation, and a Submiſſion to his pretended Authority in Church Matters, and his providing many Eccleſiaſtical Preferments here to Aliens, his Friends and Creatures, was the chief Reaſon Aliens enjoyed Benefices in England, tho' other Reaſons probable might be fancied to diſtinguiſh it from the Caſe of Laymen who had a Freehold in their own Right; but the Practice I believe has always continued to allow Aliens to enjoy Eccleſiaſtical Benefices here. Watſ. Comp. Inc. 8vo. 376. cap. 20

5. By the Statute of 13 R. 2 and 1 H. 5. Frenchmen, are diſabled to have Benefices in England, and Frenchmen endenizen'd; But Quære, whether they continue of force at this Day.

They are ſaid to be obſolete.

6. If a Layman be preſented, inſtituted, and inducted, he is Parſon de facto, and it is not a mere Nullity. Hobart's Reports 209.

See And 16 pl. 34 Paſch. 12 Eliz. Benefield v. Pickering.——Bendl. 195. S. C.———D. 292. b. pl 1. Mich. 13 & 14 Eliz. S. C —— Watſ. Comp. Inc. 8vo. 52. cap 5. cites S. C.——S. P. per Popham Ch J. Cro. E. 315. Hill. 36 Eliz. B R. in Caſe of Pratt v. Stocke.———At *Common Law* a mere Layman was incapable. By a Statute in Q. Elizabeth's Time, a *Deacon* was made capable; By the Statute 14 *Car.* 2. 4. *none but a Prieſt* is ſo; and this Statute is declarative of the Common Law, and the *Benefice not ipſo facto void*, but that there muſt be a Deprivation; and it is not like the Caſe of a Woman preſented, which is a perfect Nulliry; but when a mere Laicus is in, the Church is full; per Scroggs Ch. J. 2 Show. 54. Paſch. 31 Car. 2. B.R. in Caſe of Hill v. Boomer.

A Layman is capable of a *Prebend*, for non habet Curam Animarum. Cro. E. 79. Mich. 29 & 30 Eliz. B R. Bland v. Madox.

A Doctor of the Civil Law was admitted, inſtituted and inducted to a Living, being only a Layman, and made a Leaſe for Years of the Rectory; and if it was good was the Queſtion. The Leaſe was confirmed before 13 Eliz. by the Patron and Ordinary. Per Gawdy J. ſuch Acts which he was not capable to do ſhall *not bind* the Succeſſor, becauſe upon the Matter he was never Incumbent, and cited 4 H. 7. . . and 28 H. 8. D. . . . But Popham and Fenner J. contra. For in regard he was *Parſon de facto*, and ſuch an one whereof the Law takes Cognizance by his Induction, and the People cannot take Notice of any other, All Acts done by him during that time ſhall bind as well as if he had been Rightful Parſon. For it would be miſchievous if all the Acts by ſuch Averments ſhould be drawn in Queſtion. And all agreed, that all *Spiritual Acts*, as Marriage, Adminiſtration of the Sacraments &c. by ſuch a one during the time that he is Parſon are good, and therefore a *Leaſe* made by ſuch an one, and confirmed by the Patron and Ordinary, ſhall well bind the Incumbent Succeſſor; and reſolved to have adjudged it accordingly by Conſent of Gawdy J. But for other Defects the Judgment was ſtayed. Cro. E. 775. pl. 5. Mich. 42 & 43 Eliz. B. R. Coſtard v. Winder———Mo. 606. pl 836. S. C. and ſays, that the Succeſſor became bound in an Obligation after the 14 Eliz, that the Leſſee ſhould enjoy the Term; after which Obligation the Succeſſor was abſent, more than 80 Days in a Year; And the Queſtion was, if the Obligation was void by the Statute of 14 Eliz. and adjudged that it was not, becauſe the Leaſe was good, and ſo was the Obligation made for enjoying the Leaſe which the Succeſſor could not avoid. And note, they agreed, that the Parſon being a Layman *ought to have been deprived*; For otherwiſe all his Acts will be good as lawful Patron till Deprivation.——And the Deprivation ſhall not have ſuch Relation to make him no Parſon ab Initio, though it be declaratory; For the Succeſſor ſhall not have meſne Profits. D. 292. b. Marg. pl. 72. cites S. C.——Watſ. Comp. Inc. 8vo 119. cap. 8. cites S. C.

Tho' a Layman, by being admitted and *inſtituted to a Benefice*, has a Freehold, yet he may be ſued in the Spiritual Court and *deprived* for that Cauſe; but if he has wrong done him, he may, peradventure, try it by Aſſiſe. Cro. C. 65. Hils. 2 Car. C. B. in Sutton.s Caſe.

7. If a Man utterly illiterate be preſented, inſtituted, and inducted, this is not a mere Nullity, but he is Parſon de facto.

8. If a Woman be preſented, inſtituted, and inducted, it is a mere Nullity, becauſe her Incapacity is apparent. Hobart 209.

S. P. per Scroggs 2 Show 54 Paſch. 31 Car. 2. in Caſe of Hill v. Boomer.

(M. a) What Persons may be presented *for a collateral Respect.*

1. IF a Grant of the next Avoidance be granted to three, and after the Church voids, and two of the three present, the third Grantee being a Clerk, this is a good Presentment, and the Bishop cannot refuse him, though all three were Jointenants thereof by the Grant, and only two of them joined in the Presentment; because the third Person cannot present himself. D. 13, 14 El. 304. 54.

Perhaps that one could not maintain Quare Impedit; For the *Habendum* was *Eis & uni eorum Conjunctim & Divisim*, and so the *Severance* in the Habendum seems *void in Law*. D. 304. b. pl. 54. ——Watſ. Comp. Inc 8vo. 402. cap. 20. cites S. C.

2. But if one of the three Grantees had presented the third alone, the Bishop might have refused him. D. 13. 14 El. 304. 54.

Presentment of the third by one alone was held good, the Grant being to the three Et eorum cuilibet *Conjunctim & Divisim*. Mo. 4. Trin. 31 H. 8. Sir Godfrey Foliamb's Case. —— Watſ. Comp. Inc. 8vo. 402. cap. 20. cites S. C.——And. 2. S. C.——4 Le. 119. S. C. by the Name of Sir William Hollis's Case.——Bend. 24. S. C. by Name of **Hollis v. Roland**, where the Deed of Grant is recited Verbatim, and no *Habendum* in it.——Mo. 849. pl. 1154. Coke Ch. J. cited this Case out of Bendloe, and takes a *Difference between a Joint Interest and a Joint Authority*, and that one alone could not present, because it was a Joint Interest, but that had it been a Joint Authority it had been otherwise.

If three are *seised of a Manor with Advowson appendant*, whereof the *one is a Priest*, and *they three present the Priest by a strange Name*, who is admitted, instituted, and inducted, this is a good Presentation, and a good Seisin for them; and if the Priest dies, and the other two survive, this is good Title for them in another Quare Impedit; by the Justices. Br. Presentation, pl. 45. cites 21 E. 4. 66.

Watſ. Comp. Inc. 403. cites S. C.——* S. P. but if the Ordinary does admit him accordingly, this gains no Possession; For there is no Presentation, and a Man cannot plead Plenarty of his own Presentment. Watſ. Comp. Inc. 8vo. 204. cap. 13. cites 14 H. 8. 3.

3. He who *presents himself by a strange Name* where he is Patron, and takes, he shall be put out for Spoliation; For he may pray the Ordinary to * admit him, but not present himself. Br. Quare Impedit, pl. 18. cites 35 H. 6. 59.

And afterwards upon a Motion for a Consultation, because otherwise Stokes had no Remedy, the Court refused to grant it. Lat 253. S. C. by Name of Stoke v. Styles —— Noy. 91. S. C. by the Name of Stock v. Sicks.

4. Stokes the Father was Incumbent, and after his Death the Patron presented Stokes the Son, who was refused by the Bishop, because by the Canon Law *Filius non potest succedere Patri in eadem Ecclesia*, whereupon the Patron presented Sykes; then Stokes the Son obtained a Dispensation Non Obstante the Canon; but the Ordinary instituted Sykes, and caused him to be inducted. Thereupon Stokes the Son sued Sykes and the Ordinary in the Delegates; But by all the Justices a Prohibition was granted; and Jones J. said, that he had known it granted three Times, where both Persons claimed by one Patron. But he and Doderidge held, that *the Canon abovementioned holds not in this Church*; And Doderidge said, that so was the Opinion of a learned Civil Lawyer. Lat. 191. Stokes v. Sykes.

(N. a) *To whom* it shall be *made.*

Hutt. 24. in Case of Booton v. Bishop of Rochester, it was held to be clear.

1. AFTER Lapse incurred to the Metropolitan, and before Collation by him, if the Patron presents, he may present to the Ordinary of the Dioces without presenting to the Metropolitan. Contra. H. 41 El. B. R. per Popham.

clear, that though the ſix Months paſs, yet if the Patron preſents, the Biſhop ought to admit, though it be after the Title devolved to the Metropolitan.———Watſ. Comp. Inc. 8vo. 265. cap. 15. cites S. C.———Watſ. Comp. Inc. 8vo. 199. cap. 12. cites S. C.

(O. a) *At what Time* [a Man] may preſent.

Fol. 349.

1. **If a Man preſents his Clerk to the Biſhop, who** dies before he is received, **he may** preſent another. 38 E. 3. 36. b.

2. **If a Man preſents his Clerk to the Biſhop, yet he** may preſent another before the Biſhop has received his Clerk. 38 E. 3. 36. b.

And the Biſhop ſhall receive him; For the Writ which iſſues to the Biſhop does not mention that the Biſhop ſhall receive the ſame Perſon that was firſt preſented to him. Per Finch. Br. Quare Impedit, pl. 67. cites S. C.———Br. Preſentation, pl. 18. cites 18 E. 3. 36. but it ſhould be (38.)

3. 3 E. 1. *cap.* 28. Enacts, that *no Clerk of the King or other Juſtice ſhall receive the Preſentment of any Church, whereof Plea is pending in the King's Court, without ſpecial Leave of the King, in pain to loſe the Church and his Service.*

4. Where *a Man preſents* to the *Biſhop*, and he *will not receive him*, he may preſent as *many as he will till the Biſhop will receive him.* Br. Preſentation, pl. 18. cites 18 E. 3. 36. Br. Quare Impedit, pl. 67. cites S.C.

5. If an *Incumbent changes his Benefice for another*, or reſigns it, the Patron may preſent immediately; For theſe are Voidances in Law and in Fact. Br. Preſentation, pl. 49. cites 2 H. 4. 5.

6. In Quare Impedit, the Defendant *ſaid, that the Incumbent was preſented, living the other Incumbent*, and ſo he is in by Spoliation &c. Br. Quare Impedit, pl. 13. cites 33 H. 6. 26. in a Nota.

7. When one having good Title to preſent, and an *Incumbent by Uſurpation is* admitted, inſtituted, and *inducted, and after* that *the Patron preſents*, and the Biſhop refuſes, and after the Patron recovers, and then he, which had this Preſentation, exhibits it to the Biſhop, this is now a good Preſentation; and the Patron cannot revoke or give him a new Preſentation; but if the Patron, before the Death of the Incumbent, makes Letters of Preſentation, that is void; becauſe he had no Title to preſent. Hutt. 67. Mich. 21 Jac. Rud v. the Biſhop of Lincoln.

8. If the *Patron preſents* his Clerk *a Week before* the 6 *Months* be *ended*, and the *Ordinary refuſes* the Clerk *for Inability*, becauſe he is unlearned, and *then the* 6 *Months paſs* before he preſents another after the 6 Months after the Death of the Incumbent; in ſuch Caſe, *the Biſhop ſhall have* the *Collation* of the Clerk, becauſe *it was the Folly of the Patron*, that he did not preſent his Clerk before, ſo as the Ordinary might examine him; and that thereupon if he be found to be unable, that he might preſent another Clerk to the Ordinary within convenient Time, and for that Cauſe is the 6 Months given to the Patron, that he provide another Clerk in the mean Time; per Ld. Dyer. 3 Le. 46. Mich. 15 Eliz. in the Common Pleas.

9. Quare Impedit to the Vicarage of Huſton in Suſſex, by the King againſt and the Biſhop; the Caſe was ſuch, the *King* had the *Advowſon* of the Vicarage belonging to ſuch a Manor, *by reaſon of* the *Wardſhip* of the which became void during the Minority of the Heir; the Heir ſues Livery; the King *preſents* thereto *under the Great Seal*; *and afterwards* (without mentioning this firſt Preſentment) preſents thereto another *under the Seal of* the *Court of Wards*; the ſecond Preſentee is admitted, inſtituted and inducted by the Biſhop before any Notice of the firſt Preſentment; The King brings a *Quare Impedit againſt* the *firſt Preſentee*; and adjudged, that it *lay not*; for by Coke and Warburton, it was within the diſpoſing of the Court of Wards, although

though it were after Livery, because it was a Chattel vested. Cro. J. 247. Trin. 8 Jac. C.B. the King v. . . . . .

(P. a) At what Time it may be. [*Before Deprivation.*]

See (M. b)

1. IF an Incumbent be deprivable, yet the Patron cannot present another to the Church before he is deprived; For the Church is not void before. Contra. 17 E. 3. 59. b.

Watſ. Comp. Inc. 8vo. 385. cap. 20. cites S. C. But otherwiſe it is where the Church is for ſome Fault or Defect in the Clerk declared by the Law to be actually void.

2. If the Viſitor, by Command of the King, returns into Chancery good Matter of Deprivation of the Clerk of the King, yet the King cannot preſent another to the Church before that he is deprived. Contra. 17 E. 3. 59. b.

3. If an Incumbent be *created a Biſhop*, the firſt Benefice is void immediately; But if he *takes two Benefices incompatible*, this is a Voidance in Law or Cauſe of Voidance, and not void in Fact. to make the Patron able to preſent till he be conven'd and deprived by Sentence; per Hill; And ſo ſee that the Voidance is not by his Act only as it is of Reſignation, or of the taking of a Biſhoprick; Quære of thoſe of the Spiritual Court. Br. Preſentation, pl. 50. cites 11 H. 4. 36.

(Q. a) At what Time it may be; *where the Church is full.*

* S. C. Roll Rep. 191. 227. 2 Roll Rep. 6. Hill. 15 Ja. B. R. — *Admiſſion and Inſtitution* without more, is good Plenarty and Poſſeſſion *between common Perſons*

1. IF J. S. preſents, and his Clerk is Admitted and Inſtituted, J. D. cannot preſent his Clerk before Induction; for the Church was full againſt a common Perſon before; for by the Inſtitution he has Curam Animarum. 38 E. 3. 4. By Reports. 13 Ja. B. between *Hitching and Glover*; and in the ſame Caſe H. 15 Ja. B. R. adjudged. D. 4 El. 217. 62. adjudged. 22 H. 6. 27. Co. 6. *Boſwell* 49. b. 33 H. 6. 24 Co. 4. 76, b. Co. 7. 26. Co. 6. 41. Da. 82. b. 21 E. 4. 34. b. Com. *Hare.* 528.

Br. Plenarty, pl. 5. cites 22 H. 6. 27.——Br. Quare Impedit, pl. 1. cites S. C.——S. P. Ibid. pl. 10. cites 33 H. 6. 24.—S. P. Ibid. pl. 83 cites 22 H. 6. 25.——S. P. Br. Prerogative, pl. 20. cites 38 E. 3. 8. 9 & 10.——S. P. Br. Preſentation, pl. 17. cites 38 E. 3. 3. 4.——S. P. Br. Quare Impedit, pl. 65 cites S. C.——S. P. Watſ. Comp. Inc. 8vo. 504. cap. 26. cites Keilw. 88. Hill. 22. H. 7.——S. P. Watſ. Comp. Inc. 8vo. 50. cap. 4. And Ibid. 51 it is ſaid, that by Admiſſion and Inſtitution the Church is full as to the Cure of Souls, and againſt himſelf and all other Perſons, unleſs the King.

Againſt the King there is no Plenarty *without Induction or Inſtallation*; quod nota. Br. Plenarty, pl. 5 cites 22 H. 6. 27.

2. But if a Common Perſon preſents, and his Clerk is admitted and inſtituted before Induction, the King, if he has Right, may preſent, and his Clerk ſhall be inſtituted; for the Church is not full againſt the King before Induction. 38 E. 3. 4. 9. adjudged. By Reports. 13 Ja. B. between *Hitching and Glover*. And H. 15 Ja. B. R. in the ſame Caſe ſo adjudged. D. 4 El. 217. 62. 22 H. 6. 27. 33 H. 6. 24. Co. 7. 26. Co. 6. 49. b. Da. 82. b.

——Br. Quare Impedit, pl. 1. cites S. C.——S. P. Ibid. pl. 10. cites 33 H. 6. 24.—S. P. Ibid. pl. 65. cites 38 E. 3. 3. 8. 9.——S. P. Ibid. pl. 83. cites 22 H. 6. 25.—S. P. Br. Preſentation, pl. 17. cites 38 E. 3. 3. 4.——S. P. Br Prerogative, pl. 20. cites 38 E. 3. 8. 9 & 10.——S. P. Watſ. Comp. Inc. 8vo. 393. cap. 20.—— S. P. Watſ. Comp. Inc. 8vo. 50. cap. 4.——S. P. And yet if the Patron preſents, and his Clerk is Admitted and Inſtituted, and forbears to be inducted 18 Months, the King ſhall not preſent upon him for Lapſe, the Inſtitution ſtopping the Lapſe from going to the inferior Ordinary. Watſ. Comp.

Comp. Inc. 8vo. 196. cap. 12. cites Hob. 154. Colt v. Glover, and Goldsb. 164. Hill. 43 Eliz. per Popham, in Caſe of Robbins v. Prince.

In Quare Impedit it was agreed, That where a *Biſhop preſents to the Prebend, and dies before Induction*, by which the Temporalties come into the Hands of the King, that the *King ſhall preſent* to the Prebend; for there is no Plenarty againſt the King without Induction. Br. Plenarty, pl. 3. cites 11 H. 4. 7.——*So* where the Biſhop *makes Collation, and dies* before Induction. And from hence it ſeems that *Collation with Inſtitution* is good Plenarty *againſt a common Perſon*, as well as Preſentation with Admiſſion and Inſtitution. Ibid.

3. But if the King has not any Right **to the Church, the Church is full by Admiſſion and Inſtitution of the Clerk of a Common Perſon, without Induction againſt the King alſo, ſo that he cannot preſent. By Reports 13 Ja. B. between** *Hitching and Glover*. **And Hil. 15 Ja. B. R. in the ſame Caſe agreed.**

S C. and S. P. by Coke. Roll. Rep. 227. 228. and that ſo it is if he claims from a Common Perſon.

4. **If a Man** uſurps upon the King, and his Clerk is Inſtituted and Inducted, **tho' the Patronage be not out of the King, and the King may remove the Incumbent by a** Quare Impedit, **yet** * till Removal **the Church is full againſt the King; and ſo during this Time he cannot preſent any other to the Church; for by the uſurpation the Preſentment** Hac Vice **is out of the King. M. 13 Ja. B. R. between the** *King and Sacker* **agreed. Fitz. Na. 36. K. 1 H. 7. 19. Co. 6. 30. and 49. b.**

* S. P. Or *Reſignation*. Cro. J. 385. Mich. 13 Jac. B. R. S. C. by Name of the King v. Biſhop of Norwich, Cole and Saker.—Before Remotion by Quare Impedit, the Plenarty ſhall bind him Quoad the Poſſeſſion; for Reaſon requires that the Church be ſerved; and one being in by Preſentment, and according to the Ceremonies of the Church cannot be put out without Action. Cro. J. 123. Trin. 4 Jac. B. R. The King v. Champion ——Before a Preſentation can be made to a Church, it muſt be actually void, and its being voidable only is not ſufficient. Roll. Rep. 213. Per Coke, who cited 17 E. 3. Small's Caſe.

If a Prebend happen void, and the Biſhop collates thereunto, and before Induction the Biſhop dies, and the Temporalties come unto the King, and after he is inducted, and afterward the King giveth the ſame by his Letters Patents unto another Clerk who is Inſtituted and Inducted, the firſt Clerk ſhall have a Spoliation in the Spiritual Court againſt the Preſentee of the King; becauſe the King ought to have removed him by Quare Impedit, and not to have collated as he did. And there the Patronage doth come in by Debate. F. N. B. 36. K.

5. So, before Removal **of the Clerk, the** King cannot preſent the ſame Clerk **who is in by uſurpation; for this cannot enure as a Surrender and new Preſentment. M. 13 Ja. B. R. between the** *King and Sacker* **adjudged.**

S. P. Roll. Rep. 235. Per Coke quod fuit conceſſum per totam Curiam. S. C. by Name of The King v. Biſhop of Norwich.

6. **If a** Man recovers in Quare Impedit againſt the Incumbent, **the Incumbent is ſo removed by the Judgment, that the Recoverer** may preſent **to the Church** without other Removal **of the Incumbent,** tho' **the Incumbent** continues Incumbent De Facto till Preſentment **by the Recoveror. M. 12 Ja. B. R. between** * *Whiſtler and Singleton*. **Reſolved per Curiam. Trin. 13 Ja. B. R. between** *Auſtin* **and** *Dr. Harris* **per Curiam, without Writ to the Biſhop. 32 E. 3. Quare Impedit 2. admitted in Caſe of the King.**

Fol 350.

* S. C. Accordingly. Roll Rep. 62. And Coke ſaid the firſt Incumbent continues Incumbent De Facto till the laſt Incumbent be inſtituted.——S. P. Watſ. Comp. Inc. 8vo. 382. cap. 20.

7. But **after ſuch Recovery in a Quare Impedit** a Stranger to ſuch Recovery cannot preſent **to the Chuch; for notwithſtanding the Recovery, yet the Incumbent** continues Incumbent De Facto **as to Strangers. M. 13 Ja. B. R. between** *Fairebank and Durham.*

If a Stranger to the Recovery (tho' his Title be beſt) ſhould preſent o Watſ. Comp. the Church, his Preſentation would be void, as being made to a Church that is full. Inc 8vo. 382. cap. 20. cites S. C.

8. **If A. and B. are** Tenants in Common **of an Advowſon, and the Church voids, and** a Stranger uſurps, and his Clerk inducted, and A. and

Roll. Rep. 242. S. C.

Adjornatur. —Watſ. Comp. Inc. 8vo. 383. cap. 20. cites S. C.

A. and B. bring Quare Impedit, **in which** B. is ſummon'd and ſever'd, and **after** A. recovers **before other** Removal **of the Incumbent,** B. **cannot preſent; for he** is a Stranger to the Recovery. **Dubitatur. M.** 13 **Ja. B. R. between** *Fairbank and Durham.*

Roll. Rep. Rep. 242. S. C. Adjornatur.—Watſ. Comp. Inc. 8vo. 383. cap. 20. cites S. C.

9. So **in this Caſe** B. cannot after the Recovery preſent the ſame Perſon **who was Incumbent, and againſt whom the Judgment is given; for this Acceptance cannot make the Church void to B. Dubitatur. M.** 13 **Ja. B. R. between** *Fairbanke and Durham.*

And. 244 pl. 257. S. P. and C. by Name of Sale v. Coventry and Marſh.—Cro. E. 207. Mich. 32 & 33 Eliz. S. C. and they all held, That

10. **The** Biſhop collated without good Title **of Lapſe or otherwiſe, and after the** Patron dies after the ſix Months **paſt, and the** Executor brings Quare Impedit by **Force of** the Statute of 4 E. 3. **and the Biſhop and the Incumbent** plead Plenarty by ſix Months, **and adjudged no Plea upon Demurrer, becauſe this Collation is not any Plenarty,** being tortious. **P.** 32 **El. B. Rot.** 2065. **between** *Smallwood* **and others Executors of** *Smallwood*, **againſt the** *Biſhop of Coventry and Litchfield.* **Adjudged upon Demurrer; but another Writ brought before abated, becauſe it was to the Impediment of the Teſtament.**

this is not a Plenarty within the Statute of W. 2. For that muſt be Ex Præſentatione, and not Ex Collatione; and the Plaintiff had Judgment.——Le. 205. pl. 284. S. C. but I do not obſerve S P. there.—4 Le. 15. pl. 53. S. C. And it was held, That the Executors upon this tortious Collation might have Quare Impedit for the Diſturbance, and that by Equity of the Statute 4 E. 3. 7. and that the Clerk ſhould be removed at the Suit of the Executors.

Co Litt. 344. b. S. P. For it ſhall be taken to be only proviſionally

11. **If the** Biſhop collates without good Title of Lapſe, **this does not put the Patron out of Poſſeſſion, but he may preſent after,** tho' the Clerk of the Biſhop be Inſtituted and Inducted. **Co.** 6. *Greene* 29. b. **and** *Boſwell* 50. **Co. Litt.** 344.

made for the Celebration of Divine Service till the Patron preſents.——If the Biſhop collates his Clerk either before he gives Notice of an Avoidance where Notice is requiſite, or at any Time within the 6 Months limited to the Patron to fill his Church, the Patron may at any Time after preſent his Clerk; for tho' a wrongful Detainer makes ſuch a Plenarty as ſhall bar the Lapſe to the Metropolitan and King, yet it is no Bar to the true Patron; and if the Biſhop admits the Patron's Clerk, the other is out Ipſo Facto; or if the Biſhop will not admit him, the Patron may as well then, as at any other Time before, have his Remedy at Law againſt the Biſhop. Watſ Comp. Inc. 187. cap 12. cites Hob. 302. Hill. 17 Jac. Gawdy v. the Biſhop of Canterbury & al.——In ſuch Caſe the Patron muſt actually preſent, and the Ordinary muſt refuſe to admit his Clerk before the Patron can bring his Action; for tho' the Ordinary has collated, yet the true Patron may preſent to the ſame Ordinary, and he may inſtitute &c. his Clerk, and then the two Clerks ſhall try who hath the better Title. Watſ. Comp. Inc. 8vo. 425. cap. 22. cites Pl. C. 500. Grendon's Caſe.———Watſ. Comp. Inc. 8vo. 425. cap. 22. cites S. C.

12. **If** Lapſe **be** devolved to the Metropolitan, **and after** the Ordinary, **who has paſs'd his Time,** collates his Clerk within the 6 Months of the Metropolitan, **and his Clerk thereupon** is Inſtituted and Inducted, **It ſeems that this was a** Plenarty **againſt the Patron; for the Collation is lawful againſt all except the Metropolitan, and it is a Plenarty againſt him alſo. Summer Aſſiſes at Bath in the County of Somerſet before the Lord Finch, upon a Trial between Sir** *Francis Popham*, **and the** *Biſhop of Bath and Wells* **and his Son; this was a Queſtion, and ſo held by Lord Finch.**

13. But a Collation **by Lapſe by a Biſhop, and an Inſtitution and Induction thereupon,** will put another Biſhop, who has the right Title to collate, out of Poſſeſſion, **and to a Quare Impedit; ſo that he cannot preſent before the Incumbent is removed. Co.** 6. *Greene* 29. b. **and** *Boſwell* 50. **Co. Litt.** 344.

S. C. Cited by Hobart Ch. J. Hob. 302. in the Caſe of Gaw-

14. **If the** King preſents Jure Prærogativæ ſuæ Ratione Lapſus, **as it is expreſs'd in the Letters Patents,** where the King has not any Title **to preſent by Lapſe or otherwiſe, and thereupon the Ordinary Admits, Inſtitutes** and Inducts the Clerk, **yet this doth not put the true**

Patron

Patron to his Quare Impedit, but he may preſent; for the Preſentment was void, the King being deceived; and then this is an Inſtitution and Induction without any Preſentment. Co. 6. *Greene* 29. b. adjudged.

dy v Archbiſhop of Canterbury & al. and ſays it is to be well underſtood that it makes no binding Plenarty againſt the true Patron; but that he may not only bring his Quare Impedit when he will, but alſo preſent upon him 7 Years after.——Watſ. Comp. Inc. 8vo. 188. cap. 12. cites S. C. and P. but adds that ſuch Plenarty bars a Lapſe to the Metropolitan.——S. P. Jenk. 244. pl. 8.

If the Queen Non habens Jus preſentandi, and yet preſents to the Advowſon as in ſuo Pleno Jure, it is a void Preſentment; for the Queen was deceived in her Preſentment, which made it meerly void as to the Queen, who can do no Wrong. And the Uſurpation is only in the Incumbent, who procured himſelf to be inſtituted; and he is the Wrong-doer, and againſt him only the Quare Impedit is always brought Per Croke J. but the other Juſtices doubted of this Point. Cro. C 562. Mich. 16 Car. B R. in Caſe of Yates v. Sir John Dryden & al.

15. If the King preſents, and therein miſtakes his Title, as if he preſents Ratione Lapſus where he has Title Pleno Jure, tho' the Clerk be Inſtituted and Inducted thereupon, yet this does not put the King to his Quare Impedit; for his Preſentment is void, and then an Inſtitution and Induction without a Preſentment is only as a Collation, and ſo the King not out of Poſſeſſion, but may preſent before Removal of the Clerk. Co. 6. *Greene* 29. b. Reſolved.

Fol. 351. S. C. and P. cited Het. 51. Mich. 3 Car. C. B. in Thompſon's Caſe.—And alſo Litt. Rep. 60. in S. C. and which is reported in the ſame Words.——S. P. Arg Roll R. 236. Mich. 13. in Caſe of the King v. the Biſhop of Norwich.

16. If the King preſents, and before Inſtitution or Induction, the King repeals it, and therof gives Notice to the Ordinary, who after, notwithſtanding, inſtitutes and inducts him, yet the King may preſent another; For the Church is not full, in as much as there is not any Preſentment. D. 12. El. 292. 70. will prove this, in as much as a Confirmation to ſuch Incumbent made by the King is void. Co. 6. *Greene*. 29. b. Reſolved. Co Litt. 344. b S. P.

17. So would it be in this Caſe, though the Ordinary inſtituted, and inducted the Clerk after Repeal, and before Notice thereof to him given; For the Notice makes nothing to the Eſſence of the Repeal, but only to charge the Ordinary as a Diſturber, if he proceeds after Notice. D. 12. El. 292. 70. will prove this in as much as a Confirmation to ſuch Incumbent is void. 25. E. 3. 47. accordingly. Vide Co. 6. *Greene* 29. b.

18. If the King preſents A. and, upon Refuſal of him, brings Quare Impedit, and pending this B. procures a Preſentment from the King of himſelf in Deceit of the King, and thereupon the Ordinary inſtitutes, and inducts B. yet this does not put the King out of Poſſeſſion; But he may preſent before Removal of B. by Quare Impedit, in as much as the Preſentment was void, and ſo an Inſtitution and Induction, without any Preſentment. Co. 6. *Greene* 29. b. D. 339. b. pl. 47. Hill. 47. Eliz. S. P. adjudged. The Vicar of Yatton's Caſe.—— The Queen having Title to the Advowſon of M. preſented one W. The Preſentee being diſturbed procured Quare Impedit &c. After which one S. obtained a ſecond Preſentation to the ſaid Church; notwithſtanding which W. procured the Biſhop to admit and inſtitute him, and a Mandatum to have him inducted, and after Judgment was given for the Queen, W. was inducted, and Writ awarded after this to the Biſhop, and the Opinion of the Juſtices was in this Caſe, that the firſt Preſentation was repealed, and become void. And. 38. Mich. 15 & 16 Eliz Anon.

19. If a Man preſents in Time of War, and the Preſentee is inſtituted and inducted in Time of Peace, yet this ſhall not put the Patron to his Quare Impedit, but that he may preſent; For this is but an Inſtitution and Induction without any Preſentment. Co. 6. Greene 30. Vide 6. E. 3. Watſ. Comp. Inc. 8vo. 392. cap. 20. cites S. C. & 2 Rep. 93 Bingham's Caſe——S. P. And though the Preſentment be in Time of War, and the Clerk is admitted thereupon in Time of Peace, yet the Law gives regard to the Original Act, that is to ſay, to the Preſentment, and all that follows

follows thereupon ſhall be avoided, as being conſtrued to be in Time of War, and ſhall not put the rightful Patron out of Poſſeſſion. Watſ. Comp. Inc 8vo. 210. cap. 13. cites 6. E. 3. 41. 6 Rep. 30 Green's Caſe, 2 Rep. 93. Bingham's Caſe, & 1 Inſt. 249. b.

Watſ. Comp. Inc. 8vo. 383. cap. 20. cites S. C.

20. If a Stranger, without Title preſents by Tort to my Church (being void) by Simony, and 6 Months paſs, yet I may after preſent; For the Statute has made the Preſentment Inſtitution, and Induction void, and ſo he is not Incumbent, nor the Church full. Co. Litt. 120.

21. If a Lapſe devolves to the King, and after the inferior Ordinary collates for the Lapſe, and his Clerk is inſtituted and inducted, it ſeems that this does not make any Plenarty againſt the King to put him to his Quare-Impedit, but that he may preſent and ouſt the Clerk of the Ordinary; For when Lapſe is incurred to the King, this cannot be taken away by the Ordinary, and then when the * Ordinary collates without good Title, this does not make any Plenarty againſt him, who has the Right as the King has to preſent; For Lapſe incurred to the King is not like to a Lapſe incurred to a Metropolitan.

* See pl. 11.

Hob. 168. Paſch. 14 Jac. Winchcomb v. the Biſhop of Winton & Pulleſton.—Watſ. Comp. Inc. 8vo. 383. cap. cites S. C.

22. If a Man be preſented inſtituted and inducted to a Church by Simony, tho' it be void as to the King and the Pariſhioners, yet it is not void to an Uſurper; For a Man without Right ſhall not preſent thereto. Hobart's Reports. 227. *Winchcomb's* Caſe.

Br. Quare Impedit. pl. 70. cites S. C.

23. Where an *Advowſon* is aliened in Mortmain, the immediate Lord may preſent within the Year, tho' the *Church be full by* 6 *Months before his Quare Impedit brought, ſo that he brings it within the Year*; Quod nota; Br. Mortmaine, pl. 13. cites 21 E. 3. 27.

By the *Inſtitution* a Man is Parſon *without taking any Profits*. Per Aſcue. Br. Quare Impedit. pl. 83. cites 22. H. 6. 25 —— S. P. Br. Dean and Chapter pl. 9. cites 22 H. 27.

24. A Man *may be Parſon without Induction*. Per Newton Br. Quare Impedit. pl. 83. cites 22 H. 6. 25.

S. P. Comp. Inc. 8vo. 186, 187. cap. 12. cites S. C. & Hob. 318. Sir William Elvis v. the Archbiſhop of York and others.

25. If the *Incumbent reſigns*, and the *Uſurper preſents* within 6 Months, and is in for 6 Months, *no Notice* being given of the Reſignation, yet that ſhall bind him, and he ſhall be put to his Right of Advowſon; Otherwiſe if the Ordinary had *collated*; Becauſe the *Induction is notorious* to the Country, and the Patron ought to take notice of it at his Peril, to prevent the Uſurpation by an Stranger. Noy. 65. Paſch. 39. Eliz. Servien v. Biſhop of Lincoln.

26. Admiſſion, Inſtitution, and Induction *without Preſentment*, is merely void, ſaid per Williams J. to have been ſo adjudged in the Caſe of Green v. Baker. Cro. J. 252. Mich. 8 Jac. B. R. Caſe of Hunſton v. Cocket.

27. Admiſſion, Inſtitution, and Induction of one who is *mere Laicus* is not void, but voidable; and till deprived the Plenarty remains. Per Holt Ch. J. Cumb. 202. Paſch. 5 W. & M. B. R. Dr. Harſcot's Caſe—— Poph. 37. in an Anon. Caſe.

28. In all Caſes when the Church is not otherwiſe filled, than by *Inſtitution and upon a void Preſentment, or* by *wrongful Collation* (except the Collation be made upon him that hath Right to collate) *tho' the Clerk*, by whom the Church is filled, *has remained* as *Incumbent* for *ſome Years, yet if* after the *Patron preſents* his Clerk to the Biſhop his *Preſentment is not void*, but the Biſhop may and ought to inſtitute him thereupon, and the Inſtitution ſhall be good to the Ouſting of the other Incumbent, and if the Biſhop refuſe, the Patron may by Suit recover his Preſentment. Watſ. Comp. Inc. 8vo. 384. cap. 20. cites 6 Rep. 22. Green's Caſe —— and 6 Rep. 50. Boſwell's Caſe—& Co. Litt. 344.

29. If

29. If a *Church* be *once duly filled* of a Clerk, *tho' the Clerk be* after *deprivable, yet it till* ſuch Time as *he is* actually *deprived*, the Patron may *not preſent*. Watſ. Comp. Inc. 8vo, 384. cap. 20.

(Q. a. 2) *Plenarty. By whom* to be *pleaded, and in what Caſes* it is a good Plea.

1. AS well *the Incumbent* as the Patron may plead Plenarty by 6 Months the Day of the Writ purchaſed. Br. Plenarty pl. 14. cites Fitzh. Quare Impedit. 32. 47, 48, 49 & 189.

None ſhall plead Plenarty in Quare Impedit but the

Patron, or he who is preſented by Lapſe. Per Belknap, But per Parry *at Common Law the Incumbent* might have pleaded that he *was in of the Preſentment of the Plaintiff himſelf*, But *not* of the Preſentment *of a* * *Stranger*, Quod Belknap conceſſit. Br. Plenarty, pl. 12. cites Fitzh. Incumbent. pl. 4. 2 R. 2. — * S P. That *Plenarty by 6 Months of the Preſentment of a Stranger* is not Plea for the *Incumbent to plead*. per tot. Cur. For *it is not to the Writ*; For he does not give a better Writ againſt any Perſon certain; *Nor* it is not *to the Action*; For he does not make to himſelf any Title to the Patronage. Br. Plenarty, pl. 9. cites 16 E. 4. 11. — S. P. *Nor for any other but for him againſt whom the Writ of Right of Advowſon lies*, which is againſt none but the Patron. per tot. Cur. Br. Quare Impedit. pl. 134. cites S. C. —— S. P. Br. lenarty, pl. 6. cites 38 H. 6. 20. ——If the Clerk of a Stranger be incumbent of a Church by the Space of 6 Months, by Admiſſion and Inſtitution only, upon his Preſentation, this makes a Plenarty without Induction. Hill. 22 H. 7. Kelw. 88.—And the Patron may plead Plenarty againſt all Common Perſons. Watſ. Comp. Inc. 8vo. 504. cap. 26.

2. If my *Anceſtor, Tenant in Tail preſents*, and after a *Prior gets the ſame Advowſon and appropriates it*, and holds in proper Uſe *by Licence a Year and a Day*, and my *Anceſtor dies*, I may have Aſſiſe of *Darreign Preſentment or Quare Impedit* at any Time; for now the Advowſon is always full, and this is a Preſentation. Br. Preſentation. pl. 8. cites 46 Aſſ. 4. Per Finch J.

But if a Man had preſented to it, and the Church is full by this by 6 Months in the Time of the Anceſtor,

then the Iſſue ſhall attend 'till the Church voids. Br. Preſentation. pl. 8. cites 46 Aſſ. 4. Per Finch. J.

3. In Quare Impedit, the *Incumbent pleaded, that the Patron* T. H. *was ſeiſed of the Manor* of Dale, *to which the Church is Appendant, and the Church voided by the Death of one E. and* the ſaid T. H. *preſented him, by force of which he was admitted 6 Months before the Writ purchas'd*, Judgment ſi Actio &c. Per tot. Cur. it is a good Plea for the Patron himſelf without ſhewing other Preſentment in him before; But per Danby, yet this does not lie in the Mouth of the Incumbent. To which it was ſaid, that the Plea was good by the Incumbent in this Caſe. Quære Cauſam, Becauſe it ſeems that this Plea is for the Patron, and not for the Incumbent. Br. Plenarty. pl. 4. cites 22 H. 6. 25.

The Defendant had been *Parſon for 3 Years*, and *pleaded* Plenarty generally by 6 Months of the Preſentation of one A. a Stranger to the Writ; and the

Court held the Plea naught, becauſe the Defendant *ſhewed no Title in A.* Brownl. 162. Cranwell v. Liſter. —— Noy 30. S. C. by Name of Liſter v. Crameel. But had he pleaded Preſentment of the Plaintiff himſelf, or Collation by Lapſe to the Ordinary, there, he need not make any Title. —— Watſ. Comp. Inc. 8vo. 516. cites S. C.

4. *Parſon Imparſonee* cannot plead Plenarty *againſt a Stranger Patron*; for the Pleading is given by the Statute of *Weſtminſter, cap.* 5. that the Church is full by 6 Months, before the Writ purchas'd, of ſuch a one by Preſentation of ſuch a one; which *Parſon Imparſonee* cannot plead, for he is *not in of any Preſentation*. Br. Plenarty. pl. 7. cites 38 H. 6. 20. 39 H. 6. 21. Per Priſot.

S. P. Br. Plenarty. pl. 6. cites 38 H. 6. 20. That Plenarty by Parſon Imparſonee is no Plea. ——

S P Br. Preſentation. pl. 36. cites 39 H. 6 20. —— Br. Quare Impedit. pl 14 cites S. C. —— S. P. Fin. Law. 8vo. 19[illegible]. —— S. P. Watſ. Comp. Inc. 8vo. 515. cap. 26. cites 22 H. 6. 14 38 H. 6. 20 and 16 E. 4. 11 and Pl. C. 501. **Grendon's Caſe.** —— *But* Per Priſot, *in Quare Impedit againſt* Parſon Imparſonee, Plenarty of himſelf by a Year and a Day before the Writ purchaſed, is a good Plea, if it was lawfully appropriated. Br. Plenarty. pl 6. cites 38 H. 6. 20.

5. Note,

5. Note, *when there is no Patron, as where the Prior is a Prieſt, and is admitted to his own Benefice*; or where *my Advowſon is alien'd in Mortmain, and appropriated* to a Religious Houſe, and the like; In thoſe Caſes I may have Quare Impedit, and there Plenarty by 6 Months is no Plea. Br. Plenarty. pl. 10.. cites 14 H. 8.

Dr. Watſon ſays, From this he ſuppoſes, that Plenarty upon a void Preſentment is not pleadable; for then the Clerk is Incumbent as it were by Collation only; but when it is ſaid, that Plenarty by Collation is not pleadable, it is to be limited as to ſuch who have Right to preſent, but not to ſuch who have no Right to collate; for Plenarty by Collation puts him, that has the Right to collate, to his Writ of Right, and is pleadable againſt him that hath the Right of Collating. Watſ. Comp. Inc. 8vo. 505. cap. 26. cites 17 E. 3 64. b. Dean of Lincoln's Caſe. — And 6 Rep. 49, 50 Mich. 3 Jac. in Boſwell's Caſe, And 2 Inſt. 357.

6. *Plenarty* by 6 Months *upon an Inſtitution*, where the Inſtitution is made *upon a Preſentment, is pleadable* by all Perſons againſt a Common Perſon; yet a Plenarty by *mere Collation is not* pleadable, but the Patron may bring his Writ and remove the Collatee at any Time. Watſ. Comp. Inc. 8vo. 505. cap. 26. cites Stat. Weſt. 2. cap. 5. 3 Cro. 297. Mich. 32 & 33 Eliz. C. B. Smallwood, Cole and Sale v. the Biſhop of Coventry and Marſh. Jenk. Cent. 7. Caſe 7. 6 Rep. 49. Mich. 3 Jac. Boſwell's Caſe.

See (F. a. 2) (R. a) At what Time it may be. [*Where there is Alienation, Diſſeiſin* &c.]

S. P. Watſ. Comp. Inc. 8vo. 180. cap. 11. —

* Fol. 352.

1. IF a Man be diſſeiſed of a Manor, to which **an Advowſon is appendant, and** after the Church voids, **the** Diſſeiſee **may preſent thereto** before Re-entry **into the Manor, becauſe his Entry is Congeable into any Part** * **of the Manor.** 19 H. 6. 33. 16 E. 3. **Quare Impedit. 146. Contra** 39 E. 3. 21. b.

Where his Entry into the Manor is not taken away, he may preſent to the Advowſon; Per Priſot. Br. Quare Impedit pl. 11. cites 33 H. 6. 32. — S. P. by Pollard J. Kelw. 169 Mich. 6 H. 8. — But Brooke (ut ſupra) makes a Quære thereof, becauſe, he ſays, it ſeems he cannot make Title without the Manor. — If a Man *ſeiſed of Land and of Advowſon appendant* be *diſſeiſed of the Land*, and the Advowſon voids, he ſhall not preſent to the Advowſon, for he *cannot make Title*; for if he intitles himſelf as to the Advowſon in Groſs, then the Diſſeiſor ſhall make a Leſing, ſaying, that A. B. was ſeiſed of the Land to which &c. and infeoff'd him &c. Abſque hoc, that it is in Groſs &c. And if he claims as Appendant, the other ſhall ſay, that A. B. was ſeiſed of the Land to which &c. and infeoff'd him, Abſque hoc, that the Diſſeiſee was ſeiſed at the Time of the Avoidance; Per Danby; But per Littleton, a Man who is diſſeiſed of the Manor or Land, may ſeiſe Villein Regardant, and may enter into any Parcel, and therefore may preſent, but cannot have Common Appendant without an Entry. But per Danby Ch. J. Advowſon is not Parcel of a Manor but appendant, and therefore a Diverſity; for Diſſeiſee may *enter into any Parcel*, but *not into the Appendancies without the Manor or Land to which* &c. And tho' the Advowſon may be ſever'd and made in Groſs, it ought to be *when the Owner is ſeiſed of the Land to which* &c. but *not by Preſentment when he is out of Poſſeſſion*; Quod nota, good Reaſon; and Needham J. cum illo. Br. Preſentation, pl. 30. cites 9 E. 4. 38. — *And* where *Tenant for Life aliens the Manor in Fee*, he in Reverſion cannot preſent to the Advowſon before he has enter'd into the Manor; Per Needham J. But per Moyle the Seiſin Tempore vacationis is not traverſable; and ſo Littleton and Moyle againſt Danby and Needham &c. Ibid. — If an *Advowſon voids in the Time of a Diſſeiſor*, and the *Diſſeiſee re-enters before Preſentation* made, the Diſſeiſee may preſent and ſhall have Quare Impedit. Br. Preſentation. pl. 41. cites 2 H. 7. Per Townſend; quod non negatur.

Watſ. Comp. Inc. 8vo. 180. cap. 11. cites S. C. and 16 E. 3. Quare Impedit. 146. Contra 39 E. 3. 21.

2. So **if** Leſſee for Life of a Manor, to which **an Advowſon is appendant,** aliens the Manor; **and after the** Church voids, **the** Leſſor may preſent before Entry **into the Manor for the Forfeiture, becauſe his Entry is congeable into any Part.** 19 H. 6. 33. b.

3. So **if** Diſſeiſor **of a Manor, to which &c.** aliens it, and after the Church voids, **the** Diſſeiſee may preſent **thereto before Entry into the Manor.** 19 H. 6. 33. b.

4. If

4. If Leſſee for Life of a Manor, to which **an Advowſon is Appendant**, aliens one Acre with the Advowſon, **by which the Advowſon is appendant to the Acre, and after the** Church voids, **The Leſſor may preſent before Entry into the Acre, becauſe his Entry is congeable into any Part for the Forfeiture. Contra** 18 E. 3. 44. **by Iſſue. My Reports Contra.** Watſ. Comp. Inc. 8vo. 180. cap. 11. cites S. C.

5. If Baron **be** ſeiſed of a Manor, to which **an Advowſon is appendant**, jointly with his Wife for Life, and aliens one Acre with the Advowſon, **by which the Advowſon is appendant to the Acre**, and dies, **and after the Church voids, The** Feme cannot preſent before the Acre recontinued. 17 E. 3. 5. 19. **Adjudged. Contra** 22 E. 3. 7. **Revers.** 23 Aſſ. 8.

6. But if the Alienee aliens the Acre **to another**, ſaving the Advowſon, **and** after Baron dies, **the Feme may preſent to the next Avoidance; becauſe ſhe ſhall not recover this with the Acre.** 17 E. 3. 5. 19. b.

7. So **if the** Baron had alien'd the Advowſon as in Groſs, and after aliens the Manor to another, and dies, **the Feme may preſent to the Advowſon, when it voids, before the Manor recontinued, becauſe it is in Groſs. Contra** 17 E. 3. 19. b.

8. **If a** Feme **be** endow'd of the third Part of a Manor, and of the Advowſon appendant, and after another Baron and Feme purchaſes the whole Manor; and **after the** Baron aliens one Acre **of the Manor** with the Advowſon appendant, **and** after ſecond Preſentment paſs'd **the** Baron dies, **and** Tenant in Dower dies, **The** Feme may preſent to the third Preſentment tho' ſhe has not recontinued the Acre; **becauſe the Advowſon by the Alienation could not paſs as Appendant to the Acre, inaſmuch as the Baron had only a Reverſion therein at the Time.** 23 Aſſ. 8. **Adjudged.** 22 E. 3. 7. **Adjudged. Same Caſe.**

9. **If** Tenant in Tail of a Manor, to which **an Advowſon is appendant**, diſcontinues one Acre with the Advowſon, and dies, **and after the Church voids,** The Iſſue **may preſent** before the Acre recontinued; becauſe the Diſcontinuee never preſented after the Diſcontinuance, **this being the** firſt Voidance **after.** 34 E. 1. **Quare Impedit.** 179. S. P Watſ. Comp. Inc. 8vo. 133. cap. 10. cites S. C. & Co. Litt. 333. b.

10. If Tenant for Life of an Advowſon in Groſs levies a Fine Come ceo &c. **thereof, and after the** Church voids **by Death of the Incumbent, or otherwiſe,** before any Claim made by him in Reverſion, but after he in Reverſion preſents. **In this Caſe he ſhall not have this Preſentment, though the levying the Fine was** a Forfeiture, **yet till he in Reverſion has made his Election to take Advantage of the Forfeiture, the Eſtate of the Tenant for Life is not deſtroy'd nor ended; and he might have taken Advantage of the Forfeiture by his Claim in the Life of the Incumbent; and inaſmuch as he did not make his Claim before the Death of the Incumbent, the preſent Preſentment** was a Chattle veſted in the Leſſee, **which cannot be deveſted after by the Preſentment of him in Reverſion. Trin.** 13 **Car. B. R. between** *Spring* **and** *Sir Julius Cæſar*. **Per Curiam. Adjudged in Writ of Error upon a Judgment in Bank in a Quare Impedit. Intratur. Mich.** 11 **Car.** See Eſtate. (Q. b) pl. 2— Watſ. Comp. Inc. 8vo. 134. cap. 10. cites S. C—Watſ. Comp. Inc. 8vo. 181. cap. 11. cites S. C. — Jo. 389. S. C.

Fol. 353.

(S. a) What ſhall be a *good* Preſentment. *How* it may be.

S. P. it being only a Commendation of a fit Clerk to the Ordinary. Watſ. Comp. Inc. 8vo. 390 cap. 20.

1. A Common Perſon **may preſent to a Church** by Parol. **Co. Litt.** 120.

2. **If a Common Perſon preſents to a Church** by Writing, yet this is not any Deed, but only in Nature of a Letter **to the Biſhop. Co. Litt.** 120.

See pl. 4. in the Notes.

3. **The** King **may preſent to a Church** by his Letters. 2 E. 1. **Rot. Patentium Membrana.** 5.

For the Preſentation is of the Clerk, and the Direction is to the Biſhop, and though it be by Writing it is no Deed, but only as a Letter to the Biſhop, and this is the Reaſon that the King himſelf may preſent by Parol. Co. Litt. 120. a. ——It is only a Commendation, or Declaration of the King's Will, which may be by Parol. Cro. J. 248. Trin. 8 Jac. B. R. pl. 7. the King v. .... for the Vicarage of Hunſton in Suſſex. ——S. P. Mo. 874. pl. 1221. in Caſe of the King v. Biſhop of Lincoln and King.

4. **The** King **may preſent** by Parol **without Preſentment in Writing.** 19 E. 3. **Quare Impedit.** 60. **Agreed. Co. Litt.** 120.

See (Q) pl. 14, 15. and Prerogative (O. b) pl 3, 4. &c.

5. **If the** King be deceived in his Title **of Preſentment, this is a void Preſentment. Co.** 6. *Greene.* 29. b. **Adjudged. Dubitatur D.** 16 El. 327. 6.

6. **If the** King **grants a Preſentment** by his Letters Patents **by theſe Words,** (Damus [&] Concedimus) **without any Words of Preſentment, yet it ſeems that it ſhall amount to a Preſentment, and a good Warrant to the Biſhop to inſtitute him &c. Dubitatur.** 19 E. 3. **Quare Impedit.** 60.

And though a Corporation made their Preſentation *by a wrong Name* of Incorporation, yet it was held good. Cro. J. 248. pl. 7. Coke ſaid, it was ſo ruled in the Dean of Norwich's Caſe.

7. Preſentation *by Corporation* ought to be *by Writing*. Br. Preſentation, pl. 23. cites 14 H. 8. 2. per Broke.

8. If a Man preſents *Ad Rectoriam*, it is as good as if he had preſented Ad Eccleſiam. Cro. J. 248. pl. 7. Coke ſaid, it had been ſo adjudged.

9. If the King do *ratify* the Poſſeſſion of the *Incumbent*, Ita quod in nullo Gravetur, this is now as a New Preſentment; per Coke Ch. J. 3 Bulſ. 90. Mich. 13 Jac. in Caſe of the King v. Sakar.

(T. a) Revocation. *Who may revoke* his Preſentation.

* Br. Quare Impedit, pl. 48. cites S. C —*But* in the ſecond Preſentment the firſt *muſt be recited*, and the Pleaſure of the King to revoke it; otherwiſe it is a Deceit of the King and void. Arg. 3 Le 242. cites D. 339. The Vicar of Yatton's Caſe —— If the King, before Admiſſion of the firſt Preſentee preſents another, without Fraud or Covin in the ſecond Preſentee, ſuch Recital is not neceſſary; But if the firſt Preſentee

1. **THE** King **may revoke his Preſentation.** 14 E. 3. **Quare Impedit.** 5. 28 E. 1 **Rot. Patentium. Memb.** 24. 2 E. 2. **Rot. Patentium, Part** 1. **M.** 3. **D.** 18. **El.** 348. 12. **Fitz. Na.** 34. (C) 271. (D) **D.** 12. **El.** 292. 70. **he may** before Inſtitution. 25 E. 3. 47. **Admitted and adjudged.** * 7 H. 4. 32. **D.** 16. **El.** 327. 4. After Letters obtained for Admiſſion, Inſtitution and Induction, and before Execution thereof. 14. E. 3. **Quare Impedit** 5.

ſentee be inſtituted, then ſuch ſecond Preſentation is no Repeal of the former, without *recital of the former Preſentation, and the Admiſſion and Inſtitution* thereupon; and alſo there ought to be *an expreſs Clauſe of Revocation of the firſt Preſentment, and of the Admiſſion and Inſtitution* thereupon mentioned in the ſecond Letters Patents of Preſentment. D. 339. Marg pl. 47. ſays, *This Difference* was adjudged. Paſch. 9 Ja. in the Exchequer, between Calvert and Kitchen.——The King may vary in his Preſentation *without reciting the former*, and it ſhall not be void by the Statute of † 6 H. 8. 15. per Coke, Warburton, and Foſter. Cro. J. 248. pl. 7. Trin. 8 Jac. C. B. in Caſe of the King v. ....

† See this Statute at Prerogative (Q. b. 2) pl. 8.

2. **If the** Preſentee of the King be inſtituted, **the King cannot revoke it after before Induction. Dubitatur.** 18 **El.** 348. 12. 25 **E.** 3. 47. **Admitted as it ſeems; For it is certified, that it was received after the Letters of Repeal.**

After Induction upon a Preſentation by the King, he by Letters Patents revoked the Preſentation; and per Thorp, the Preſentation is deſtroyed

3. **If the** Preſentee of the King dies after Inſtitution and before Induction, **this is a Revocation in Law, ſo that the King ſhall preſent again, becauſe the King has not the Effect of the Preſentment. D.** 20. **El.** 360. 7. **Admitted. And Co.** 9. *Holt* 132 **ſaid, that it was ſo reſolved there. Dubitatur D.** 18. **El.** 348. 12.

by the Repeal, and if the Biſhop does not ouſt the Clerk, the Temporalties ſhall be ſeiſed into the King's Hands for the Contempt, and becauſe no other Title was made but the King's Preſentation, which is defeated, a Writ was awarded to the Biſhop. Br. Preſentation, pl. 6. cites 44 E. 3. 35.

The King had Title to preſent by *Lapſe*, and his Clerk is inſtituted, but not inducted, and *died before Induction* The Queſtion was, If the King ſhall preſent for the ſaid Lapſe, becauſe the Church was not full againſt the King? The Juſtices were all clear of Opinion, that the King might repeal ſuch Preſentment before Induction; And as to the principal Matter, the Court ſeemed inclined that the King might preſent again. Le. 156. pl. 218. Trin. 32 Eliz. C. B. Wright v. the Biſhop of Norwich. ——S. P. D. 348. a. pl. 12. Hill. 18 Eliz. in **Miſton's Caſe**, and there it was held by Dyer and Mounſon accordingly; but Manwood and Harper e contra; But all agreed, that the King's Preſentation ſhall always be ſaid to be Admiſſus, Inſtitutus, & Inductus, which was confirmed by Precedents and the Books of * 22 and 33 H. 6 and 24 and 38 E. 3.——But D. 360. b. pl. 7. Mich. 19 & 20 Eliz. in the Caſe of **Gyles v. Colſhill**, where a Church became void by taking a ſecond Benefice, and Lapſe to the Queen by the 21 H. 8. by Default of Patron, Biſhop, and Metropolitan, the Queen preſented B. who was admitted, inſtituted and inducted. Then B. died. The Queen preſented G. The Patron brought Quare Impedit againſt G. and counted of the Avoidance and Lapſe, and that the Queen preſented G. who was admitted and inſtituted, but did not ſay (inducted) and that the Church being now void by B's Death, it belongs to him to preſent. The Queſtion was, If this Pleading was good? And by the greater Number of Juſtices it was held good enough, and Precedents ſhewn in the King's Caſe where Admiſſus & Inſtitutus only had been allowed. And in this Caſe it cannot be intended otherwiſe than that the Queen's Preſentation was effectually executed in all Reſpects, and ſo not revocable, and Writ for the Plaintiff was awarded to the Biſhop. ——— Bendl. 312. pl. 297. S. C. accordingly, and cites ſeveral Precedents where (Inductus) was omitted and held good. ——

* Br. Quare Impedit, pl. 1. cites 22 H. 6. 27.

4. **If the** Chancellor preſents **to a Benefice,** ſuppoſing it to be under the Value, where in Truth it is above **Value, and thereupon the Preſentee is admitted and** inſtituted, **and before Induction** the King, **being apprized thereof,** repeals the ſaid Preſentment, and preſents one in his own Name, **This is a good Repeal; becauſe, as it ſeems, the King has a right Precedent, and the King is deceived alſo in the firſt Grant.** 38 **E.** 3. 3. **b.** 9. **Adjudged.**

Watſ. Comp. Inc. 8vo. 394 cap 20. cites S. C. And Dr. Watſon ſays, he conceives it to be underſtood, that the Living is not recited in the Preſentation to be under the Value, elſe according to the **Lord Chancellor's** Caſe in Hob. 214. the Preſentation will be void, and if ſo, it can be no Queſtion in the King's Caſe at what Time it may be revok'd.——It remained good till it was avoided. Winch. 19. Parſon and Morlee's Caſe.

5. **By the Common Law of** Scotland, **a** Lay Patron **may vary after he has preſented his Clerk, and preſent another. Skene Regiam Majeſtatem** * 10. **b.** vers. 3. 31 **E.** 1. **Quare Impedit** 185. **So** by our Law, **Linwood fol.** 110. **b.** 38 **E.** 3. 36. **b.** 14 **E.** 3. 2. **b. and that the** Ordinary may admit which of the Clerks he pleaſe.

Where a common Perſon preſents his Clerk, and he *is admitted and inſtituted*, he cannot change his Preſentation before Induction and preſent

* Fol. 354.

6. But **by the Law alſo of the ſaid Realm, an** Eccleſiaſtical Patron cannot vary **from his Preſentment, Quia Præſentatio a Clerico patrono facta vim habet Electionis & eligens Indignum privatur ipſo Jure. Skene Regiam Majeſtatem.** 10. **b.** ver. 3. 31. **E.** 1. **Quare Impedit** 185. So by our Law **a common Lay Patron cannot revoke his Preſentation. D.** 81. **El.** 384 12.

preſent another; contra of the King; Note the Difference. Br. Quare Impedit, pl. 65 cites 38 E. 3. 3. 8 9. —— A Lay Patron may vary from his Preſentation before * Induction, but a Spiritual Patron cannot, becauſe he may well underſtand the Sufficiency of his Preſentee at firſt; Per Doderidge. Noy. 91. in Caſe of Stock v. Sicks.—Cites 38 E. 3. 36. D. 222. Keilw. 154 N. B. 14 E. 4. 2.—— Doderidge ſaid, that the Civilians ſay, that a Lay Patron cannot revoke his Preſentation; But he may *Cumulando variare*; And ſo the Ordinary ſhall have Election to inſtitute which of them he will; but that a Spiritual Perſon cannot vary at all. But he ſaid, that by our Law without Queſtion a Patron may revoke his Preſentation. Lat. 191, 192. Mich 3 Car. S.C. by Name of Stoke v. Sykes —— Lat. 253. S. C. —— * It ſeems miſprinted for (Inſtitution.)

7. Brooke makes a Quære in the Caſe of Nomination being in one, and the Preſentation being in another, if the Nominator may *name one, and after another*, as well as the Patron may vary in Preſentment; and ſays that diverſe of the Juſtices held that he may. Br. Quare Impedit, pl. 133. cites 14 E. 4. 2.

(U. a) *What* ſhall be ſaid *a Revocation.*

See S. C. Argued Lane 71 to 74. Trin. - Jac. in the Exchequer. —— And Ibid. 100 to 104. Hill. 8 Jac

1. IF the King preſents **to a Benefice,** and dies before his Clerk is Admitted and Inſtituted, **the Preſentment is revoked in Law by his Death. Mich. 8 Ja. Scaccario, and Hil. 8 Ja. Scaccario, between** *Calvert and Kitchin* **adjudged. Per Curiam.**

2. **If the** King preſents **to a Benefice,** and after preſents another without Revocation of the firſt, or Mention thereof, **yet it is a Revocation in Law of the firſt. Mich. 8 Ja. Scaccario. H. 8 Ja. Scaccario, between** *Calvert and Kitchin*, **per Curiam. D. 12 El. 292. 70. 16 El. 327. 4.**

S. C. argued and adjudged

3. But **otherwiſe it is if ſuch ſecond Preſentment be obtained** by Fraud **and Deceit of the King,** pending a Quare Impedit by the King **upon the firſt Grant, Notice being given to him of his firſt Grant. D. 17 El. 339. 47. Co. 6. *Greene* 29. b.**

See (T a) pl. 3. S. C. and the Notes there.

4. **If the** Preſentee of the King dies after Inſtitution, and before Induction; **this is a Revocation in Law, becauſe the King has not the Effect of the Preſentation, and ſo ſhall preſent again. Dubitatur. D. 18 El. 348. 12. Co. 9. *Holt* 132. ſaid to be reſolved in the ſaid Caſe of 18 El. D. 20. El. 360. 7. Admitted.**

See (T.a) pl. 1. 2. If the *King preſents his Clerk who is Admitted and Inſtituted*, yet *he may revoke* this Preſentment, and preſent another

5. **If the** King **preſents, and after** before Inſtitution revokes it, but before Notice **thereof** to the Ordinary, **the Ordinary** Inſtitutes and Inducts him, **it ſeems that this Preſentment was well revoked in Law, and the Conuſance thereof to the Ordinary is not material as to the Subſtance of the Revocation, but only to diſcharge him from being a Diſturber. D. 12 El. 292. adjudged as it ſeems. But Dyer makes a Quære thereof. Dubitatur D. 16 El. 328. 6. Vide 25 E. 3. 47. it ſeems will prove it.**

; for there is no Plenarty againſt the King without Induction; for where Title falls to the King, and Admiſſion and Inſtitution is paſs'd before, and no Induction, then the King may preſent. Br. Plenarty, pl. 13. cites 38 E. 3. 4.——*Contra of a Common Perſon.* Ibid.

S. C. Cited Watſ. Comp. Inc 8vo. 298. cap. 20. For if his Executor

6. **If a** Man preſents, and before Inſtitution dies, **yet it ſeems that this is not any Revocation in Law of the Preſentment, becauſe this is paſs'd from him by the Preſentment. 24 E. 3. 30. it ſeems will prove it.**

preſents another Clerk, this ſecond Preſentment is alſo good, and the Biſhop is at his Liberty which Clerk to receive. Cites Le 205. Trin. 21 Eliz. Smallwood v. the Biſhop of Litchfield &c.——S. P. Arg. Lane 74 cites Mark Ogle's Caſe.

7. The *Vicarage of Yatton* &c. *came to the Queen by Lapſe* of 2 Years. Afterwards the *Biſhop* of the Dioceſe *collated L. to it*; and afterwards the

Queen

Queen preſented one P. to the Vicarage, *who brought a Quare Impedit* againſt the Biſhop and his Collatee, *pending which Suit L.* the Collatee *by Fraud* aud Deceit *obtained a Preſentation from the Queen, without mentioning her Pleaſure to revoke the firſt Preſentation.* The *Queen by Letter* ſign'd &c. by her, *certified* the Court *that ſhe had forgot the firſt Preſentation, and* ſaid *her Pleaſure was that it ſhould ſtand firm.* And in the Term following the Queen had Judgment, becauſe *L. having demurr'd, the Fraud* and Deceit done to the Queen and the Court pending the Writ *was confeſs'd* by it, tho' the Notification thereof was not made under the Great Seal &c. D. 339. b. pl. 47. Hill. 17 Eliz. Price v. Biſhop of Bath and Lancaſter.

8. A. was preſented by *Simony*, and died; the Patron preſented L. the King preſented J. S. and after a *General Pardon* came out *with a Clauſe of Reſtitution of Forfeitures.* And altho' the King may revoke his Preſentation by expreſs Words, yet whether or no the general Words of Reſtitution contained in the Pardon ſhall amount to the Revoking of the Preſentation, and of reſtoring to his Right of preſenting, was a Great Queſtion. Et adjornatur. Freem. Rep. 198. Trin. 1675. C. B. The King v. Turvill and the Biſhop of Lincoln.

(X. a) Preſentment. * *Examination. What Time the Ordinary ſhall have* to examine the Clerk.

* Examination *is* that Trial or Probation, which the Biſhop or Ordinary makes before his Admiſſion of any

1. BY the ancient Canons **the Biſhop had** two Months **Time to inquire and inform himſelf of the Sufficiency and Qualities of every Clerk to him preſented, as appears by the Canon in 1 Ja. cap. 95.**

Perſon to Holy Orders or to a Benefice, touching the Qualification of ſuch Perſons for the ſame reſpectively; ſo that there are two certain Times or Seaſons eſpecially, wherein this Examination is required; the one before an Admiſſion to Holy Orders, the other before an Admiſſion to a Benefice. The former of theſe is expreſsly enjoyn'd by the 35th Canon Eccleſiaſtical, whereby it is required, That the Biſhop, before he admit any Perſon to Holy Orders, ſhall diligently Examine him in the Preſence of thoſe Miniſters that ſhall aſſiſt him at the Impoſition of Hands; or in Caſe of any lawful Impediment of the Biſhop, then the ſaid Examination ſhall be carefully perform'd by the ſaid Miniſters, provided they be of the Biſhop's Cathedral Church, if conveniently it may, otherwiſe by at leaſt 3 ſufficient Preachers of the ſame Dioceſs. Godolph. Rep. 270. cap. 24. S. 1.

2. But **by the Canon made** 1 Ja. cap. 95. **it is ordained that the 2 Months ſhall be abridged to** 28 Days **only.**

Fol. 355.

3. Examination of the Clerk is *to be done at a convenient Time within the 6 Months*; for the Ordinary cannot refuſe to Examine the Clerk during all the 6 Months, and to ſuffer a Lapſe to incur to himſelf; for by ſo doing the Patron ſhould loſe his Preſentation, and the Ordinary take Advantage of his own Wrong; but if the Ordinary, when the Clerk comes to be examined Sedet circa Curam Paſtoralem, he is *not* then *obliged to leave the Buſineſs in Hand*, and preſently examine the Clerk; but he may appoint a convenient Time and Place for the Examining of him. Godolph. Rep. 271. cap. 24. S. 3.

See Recuſant— Outlawry.

(Y. a) Preſentment. *Refuſal.* What ſhall be *good Cauſe* of Refuſal. *In Reſpect of* the *Preſentor.*

So of *Outlawry* in the Patron. Jenk. 259. in pl. 55.

1. IT is good Cauſe of the Refuſal of a Clerk, that his Preſentor being the Patron is excommunicated. 15 H. 7. 7. b. ſaid to be held in our Books. Co. 5. *Specot* 58.

See (M. a) pl. 1.

2. If 3 Jointenants are of an Advowſon, or of a next Avoidance, and one or two of them only preſent; the Biſhop is not any Diſturber if he refuſe him, for he is not bound to admit the Clerk, if all the Jointenants do not join in the Preſentment. D. 14 El. 304. 54.

See (M. a) pl. 1.

3. But if there are 3 Grantees of a next Avoidance, and after the Church voids, and two of them preſent the Third being a Clerk, the Ordinary is bound to admit him, becauſe he cannot join in Preſentment of himſelf, and he may relinquiſh his Title, and accept a Preſentment from the other two. D. 14 El. 304. 54.

4. If 4 Coparceners are of an Advowſon, and the 2 Eldeſt, or Eldeſt and the 3d preſent, and the others preſent another, and not all together, or the Eldeſt alone, the Ordinary may refuſe all their Clerks. Co. Litt. 186. b. 1.

(Z a.) What ſhall be good Cauſe of Refuſal. In reſpect of the *Preſentee.* And for what Cauſes they may be refuſed. [*Crimes &c.*]

3 Le. 198. pl. 251. S. C. but no Judgment —— And. 189. S. C. —— D. 254. b. pl. 2. Mich. 8 & 9. Eliz. Bell v. Biſhop of Norwich, and

1. D. 8, 9. El. 254. 2. In Quare Impedit, the Biſhop returned that at the Time of the Preſentation of the Preſentee, and all the Time of his Commorancy within his Diocels he commonly haunted Taverns and other Places, and unlawful and prohibited Games, Ob quod & diverſa conſimilia Crimina, the ſaid Preſentee was Criminoſus. And by all the Juſtices, the particular Defects above do not make the Preſentee Criminoſus, becauſe none of them deſerve Refuſal; For they are only Mala Prohibita. Co. 5. *Specot.* 58. cites this Caſe to be adjudged; And that the Words Ob diverſa Crimina are too general and uncertain.

after the Word (Criminoſus) adds viz. Et ſic inhabilis & non idonea Perſona eſſe inſtituenda in Vicariam prædictam &c. —— Hob. 296. cites S. C. —— But ſuch Crimes as are *Mala in ſe*, as **Homicide*, *Drunkenneſs*, *Incontinency*, *Perjury* &c. are good Cauſes of Refuſal. Ibid —— *Nonage*, ‡ *Baſtardy*, or † *Outlawry*. Ibid —— * S. P. if the Clerk be attainted and not pardoned, *but* otherwiſe *if he be pardoned*; For then *he is reſtored* to the Benefit of the Law. Jenk. 259. pl. 55. cites Hob. 289. Searl's Caſe. — † S. P. Br. Quare Impedit. pl. 12. cites 33. H. 6. 12. & 32. 34. H. 6. 11. 38. & 35. H. 6. 18. — ‡ S. P. Br. Quare Impedit. pl. 119. cites 5. H. 7. 19. Per Keble. — || S. P. and *ſo* of *Excommunication*. Jenk. 259. pl. 53.

2. 5. Co. *Specot* 58. Reſolved that all ſuch as are ſufficient Cauſes to deprive an Incumbent are ſufficient to refuſe Preſentee.

* For if he keeps them for two Months, Both ſhall be void; And therefore it is not at the Peril of the Biſhop. — Br. Quare Impedit. pl. 92. cites S. C.

3. It is not any Cauſe of Refuſal of Preſentee, that he has another Benefice; For this is *at the Peril of the Preſentee and peradventure the 2d Benefice is better than the firſt, and the firſt ſhall be only void; and therefore it would be miſchievous to the Preſentee if he ſhall be refuſed on this Account. 14. H. 7. 28. b. Curia.

4. It

4. **It is good Cauſe of Refuſal, becauſe the Preſentee** was Perjur'd, tho' no Conviction **was thereof.** D. 13 El. 293. 3. * 38 E. 3. 2. b. Fol. 356.

5. So, **it ſhall be, tho' he was** Perjur'd in a Suit between the Ordinary and another. **Dubitatur** † 38 E. 3. 2. b.

* S. C Cited 5 Rep. 58. a. in Specot's Caſe, and ſays the Plea of the Biſhop was, That the Preſentee confeſs'd himſelf to be perjured &c. and ſo he was Criminoſus; whence it is ſaid it appears that to allege Criminoſus generally, is not good; for no certain Iſſue can be taken thereupon, and it was doubted there if the Biſhop ought not to ſay in Fact, That he is perjur'd, and not that he has confeſs'd himſelf to be perjur'd. —† Br. Quare Impedit, pl. 94. cites S. C.

6. **It is good Cauſe of Refuſal of a Preſentee, becauſe he** is a Villein. 14 H. 7. 28. b. **Curia. Co. 5.** *Specot* 58. Br. Quare Impedit, pl. 92. cites S C. By Brian and the greater Part of the Juſtices and Serjeants ——— S. P. Br. Quare Impedit, pl. 119. cites 5 H. 7. 19. Per Keble.

7. **It is good Cauſe of Refuſal of a Preſentee, that he** has kill'd a Man. 38 E. 3. 2. b. Br. Quare Impedit, pl. 64. cites S. C.

8. **The Ordinary may refuſe a Clerk** upon his Conuſance of an Offence done by the Preſentee, which is good Cauſe of Refuſal, tho' **he be** not convicted **thereof by the Law; and this ſhall be** tried by Iſſue **whether it be true or no.** 38 E. 3. 2. b.

9. **It is good Cauſe of Refuſal of a Clerk, becauſe he is** Simoniacus in the ſame Preſentment, **that is to ſay has made a corrupt Contract to be preſented.**

10. **It is good Cauſe of Refuſal of a Clerk, becauſe he** is Simoniacus in other Benefice **than this, to which he is now preſented. Trin. 16 Ja. B. between** *Boughton* **and the** *Biſhop of Rocheſter* **in a Quare Impedit, per Curiam.** S. P. Per Keble. Br. Quare Impedit. pl. 119. cites 5 H. 7. 19.

11. *Nonability* and *Criminoſus* are ſufficient Cauſes for the Ordinary to refuſe the Clerk. Br. Quare Impedit, pl. 12. cites 33. H. 6. 12. 32. 34 H. 6. 11. 38. & 37 H. 6. 18.

12. If a *Miſcreant* or * *Schiſmatick* be preſented and inducted, this is good Cauſe of Deprivation. 5 Rep. 58. in Specot's Caſe, cites 5 R. 2. tit. Tryal 54. and ſays it was agreed to be good Law; So if he be *Irreligious*, he may be refuſed, as it is ſaid in 5 H. 7. 6. But when he is charged with the One, or refuſed for the other, *it muſt be alledged particularly*, ſo that the Party may anſwer thereto. Ibid. * S. P. And ſo Hereſy is good Cauſe of Refuſal. Jenk. 259. pl. 55. —— And tho' it does not belong to the King's Courts to determine Schiſms or Hereſies, yet the original Cauſe of Matter whereof the Court of the King has Conuſance, the Cauſe of Schiſm or Hereſy upon which the Preſentee is refus'd ought to be alleg'd in certain, that the King's Court may conſult with Divines to know if it be Schiſm or not; and in caſe the Party be dead, then to direct a Jury to try it b. Reſolv'd in Specot's Caſe. 5 Rep. 58. a.

(Z. a. 2) Refuſal. What ſhall be good Cauſe. Illiterature &c. *not being Crimes.*

See (Z. a. 3)

1. IN Quare Impedit, the Bp. pleads, That he *demanded of* J. S. *the Preſentee* of the Plaintiff, *to ſee his Letters of Orders*, and *he would not ſhew them*; And for this Cauſe, for that he was not aſcertained, whether he were Deacon or not, and *alſo he demanded* of him *Letters miſſive*, or Teſtimonials teſtifying his Ability, and becauſe he had not his Letters of Orders, nor Letters Miſſive, nor made Proof of them otherwiſe to the Biſhop, he deſired Leave of the Biſhop to bring them, and he gave him a Week, and went away and came not again, and that the ſix Months paſs'd, and he collated by Lapſe; And upon Demurrer upon it, it was adjudged for the Plaintiff; For theſe were not Cauſes to ſtay the Admittance Le. 230. S C And Anderſon ſaid, That the Biſhop may examine him upon Oath if he has Orders or not; But as to the Letters Teſtimonial of his good

Behaviour and Sufficiency, the Biſhop ought to examine the ſame himſelf, and if he gives Day and defers the Admiſſion, becauſe he is not reſolved therein, he is a Diſturber if the Clerk comes to him in a Convenient Time; And the Biſhop cannot refuſe a Clerk for the Want of Letters Teſtimonial.

tance, and the Clerk is not bound to ſhew his Letters of Orders or Miſſive to the Biſhop, but the Biſhop muſt try him upon Examination for the one and the other; And the Plea is not alledged in Facto, but Pro eo quod non monſtravit, ſo that all cometh under the (eo quod) and ſo no Part of it is traverſable; And for one and the other Cauſe it was adjudged for the Plaintiff. Cro. Eliz. 241, 242. Trin. 33. Eliz. B. R. B. R. Margaret Palmes v. the Biſhop of Peterborough.

2 Lutw. 1694 S. C but only ſtates the Pleadings, and does not report the Caſe. —— * He muſt ſhew in what Particular he is Minus ſufficiens, 2 Salk 519. S. C —— † The Court inclined that he was ſtill ſubject to an Examination of his Ability on a new Promotion, but gave no Reſolution. Carth. 311, 312. S C. by Name of the Biſhop of Exeter v. Hele. —— ‡ Show. Parl. Caſes 88. S. C.

2. In Quare Impedit, Plaintiff counts that he was ſeiſed in Fee, of the Advowſon, and that the Church becoming void, he preſented one G. who died, and that it belonged to him to preſent, and the Defendants diſturbed him; the *Biſhop* claimed nothing but as Ordinary; and *ſaid that within ſix Months* after the Avoidance, the *Plaintiff preſented Francis Hodder, who,* at that Time *was* a Perſon * *Minus ſufficiens in Literatura ſeu Capax* to have the ſaid Church; That *he examined him,* and finding him Minus ſufficientem, he *refuſed him, whereupon he gave notice* to the Plaintiff, *and he not preſenting within the ſix Months, the Biſhop collated the Defendant*; Plaintiff *replies, That Hodder,* at the Time of his Preſentation &c. *was in Holy Orders,* and had been admitted thereto upon † Examination by the Ordinary, *and was inſtituted a Vicar* into another Church for divers Years, *And was in Verbo Divino Doctus* &c. The Plea was held good by 3 Juſtices (there being then no Chief Juſtice) but was adjourned to be further argued; Afterwards Treby being made Ch. J. it was held, per tot. Cur. to be an ill Plea, 3 Lev. 313. Trin. 3 W. & M. C. B. Hele v. the Biſhop of Exeter and Hayman.—But this Judgment was ‡ reverſed in the Houſe of Lords.

See (Z. a. 2)

(Z. a 3) Refuſal. *Trial.* Where, and How the Cauſe of Refuſal ſhall be tried. *And Pleadings.*

It is requir'd by Law, that the Perſon preſented be Idonea Perſona, for ſo be the Words of the King's Writ, Præſentare Idoneam Perſonam; And

1. 9 E. 2. cap. 13. *IT is deſired, that Spiritual Perſons whom our Lord the King doth preſent unto Benefices of the Church (if the Biſhop will not admit them either for * lack of Learning, or for other Cauſe reaſonable) may not be under the Examination of Lay Perſons in the Caſes aforeſaid, as it is now attempted, contrary to the Decrees Canonical; but that they may ſue unto a Spiritual Judge for Remedy, as Right ſhall require.* (2) The Anſwer; *Of the Ability of a Parſon preſented unto a Benefice of the Church, the Examination belongeth to a Spiritual Judge, ‡ and ſo it hath been uſed heretofore, and ſhall be hereafter.*

this *Idoneitas* conſiſteth in diverſe Exceptions againſt Perſons preſented; 1ſt, Concerning the Perſon, as Baſtardy, Villenage, Outlawry, Excommunication, a Layman, Under Age, and the like. 2dly, Concerning his Converſation, as if he be Criminoſus &c. 3dly, Concerning his Inability to diſcharge his Paſtoral Duty, as if he be unlearned, and not able to feed his Flock with Spiritual Food &c. and the Examination of the Ability and Sufficiency of the Perſon preſented belongs to the *Biſhop*, who is the Eccleſiaſtical Judge; and in this Examination he *is a Judge, and not a Miniſter*, and may and ought to refuſe the Perſon preſented, if he be not Idonea Perſona. And if the Cauſe of Refuſal be for *Default of Learning*, or that he is an ‡ *Heretick, Schiſmatick*, or the like, belonging to the Knowledge of Eccleſiaſtical Law, there he *muſt give* || *Notice thereof to the Patron*; but if the Cauſe be Temporal, as a Felon, or *Homicide, or other Temporal Crime, or* if the *Diſability* grow *by any Act of Parliament* or other Temporal Law, there no Notice ought be given, unleſs Notice be preſcrib'd to be given thereby. But in a Quare Impedit brought againſt the Biſhop for refuſal of the Clerk, he muſt †† *ſhew the Cauſe of his Refuſal ſpecially and directly* (for whether the Cauſe thereof be Spiritual or Temporal, the Examination of the Biſhop concludes not the Plaintiff) to the Intent the Court, being Judges of the principal Cauſe, may conſult with

Learned

Learned Men in that Profeſſion, and reſolve whether the Cauſe be juſt or no; or the Party may deny the ſame, and then the Court ſhall write to the Metropolitan to certify the ſame; or if the Cauſe be Temporal and ſufficient in Law, (which the Court muſt decide) the *ſame may be traverſed*, and an Iſſue thereupon joined, and try'd by the Country; and yet in ſome Caſes, notwithſtanding this Statute, Idoneitas Perſonæ ſhall be try'd by the Country, or elſe there ſhould be a Failure of Juſtice, (which the Law will never ſuffer) as if the Inability or Inſufficiency be alleg'd in a Man that is ‡‡ dead, this Caſe is out of this Statute; for the Biſhop cannot examine him; and the Words of this Act are De Idoneitate Perſonæ preſentatæ ad Beneficium Eccleſiaſticum pertinet Examinatio &c. And conſequently, tho' the Matter be Spiritual, yet ſhall it be tried by a Jury; and the Court, being aſſiſted by Learned Men in that Profeſſion, may inſtruct the Jury as well of the Eccleſiaſtical Law in that Caſe as they uſually do of the Common Law. 2 Inſt. 632 ——— ‡ See (Z. a) ——— ‖ See (R. a) &c. ——— †† See Specot's Caſe. ——— ‡‡ S. P. 12 Rep. 67. Mich. 8 Jac.

* In Quare Impedit againſt the Biſhop he pleaded, that he refuſed the Clerk, becauſe *upon Examination he found him to be Schiſmaticus Inveteratus*, and for that Reaſon he refus'd to admit him, as being a Perſon by the Laws of the Church, unable and unfit to take a Benefice with Cure of Souls. This Plea was adjudg'd in C. B. to be inſufficient, becauſe it was Generally Schiſmaticus Inveteratus; And upon Error brought in B. R. the Judgment was affirm'd; for the Statute of *Articuli* ** *ſuper Chartas*, cap. 13. *ſays, Propter defectum Scientiæ, and other reaſonable Cauſes*, whereas Cauſa vaga & incerta is not a reaſonable one; and tho' the Biſhop (as it was urg'd) is Judge in the Examtnation, yet ſince his Proceedings are not of Record, the Cauſe of Refuſal is traverſable; and if it be travers'd, and the Party refus'd be alive, it ſhall be tried by the Metropolitan, but if he be dead it ſhall be tried by the Country. And if ſuch general Allegations be admitted, Patrons will be much prejudic'd now-adays in their Preſentations. 5 Rep. 57. Hill. 32 Eliz. B. R. Specot's Caſe.——Alias, Specot v. Biſhop of Exeter. —— And. 189. pl. 225. S C. adjudg'd. ——— Goldsb. 35. S. C. but no Judgment. ——— 3 Le. 198. pl. 251. S.C. but no Judgment. —— And it was obſerv'd, that it appears in our books, that the Cauſe of Refuſal ought to be certain, as in 5 H 7. 19. and 11 H. 7. 7. & 37. that the Preſentee is a *Baſtard, Villein, Within Age, or Illiterate &c.* 5 Rep. 58. a. —— ** Theſe Words ſeem to be wrong, and that it ſhould be Articuli (Cleri.)

‡ So as *this Act is a Declaration of the Common Law* and Cuſtom of the Realm. 2 Inſt. 632.

2. Quare Impedit *againſt the Biſhop and others*; the *Biſhop ſaid, that he examined the Clerk of the Plaintiff at B. in the County of C. and refuſed him for Nonability, and gave Notice to the Plaintiff thereof, and he did not preſent another within 6 Months, by which he preſented by Lapſe*; and the *Plaintiff ſaid*, that his Clerk was *Able*, and becauſe the Clerk *is now dead*, this cannot be try'd by the Metropolitan by Examination, and therefore it was *try'd per Pais*, and this *by the County of C. where the Examination was*, and not by the County of D. where the Writ is brought; quod nota. Br. Quare Impedit. pl. 102. cites 39 E. 3. 1, 2. S C. cited 12 Rep. 67. Mich. 8 Jac.

3. In *Quare Impedit* if *the Biſhop juſtifies the Refuſal* of the Clerk *becauſe the Church was litigious 'till he inquired De Jure Patronatus*, he *ſhall not traverſe all Refuſals after the Inquiry*, by reaſon that he has juſtified before; and *if the Plaintiff alleges other Refuſal after the Inquiry* De Jure Patronatus, *this is a Departure and Feofail*; for he relinquiſhes his firſt Day alleg'd of the Refuſal which ought not be; for if he will have Advantage thereof, he ought to have alleg'd this Day at firſt; for he ſhall allege only One Day. Br. Repleader, pl. 41. cites 33 H. 6. 13.

4. The *Ordinary commanded the Clerk to come* to him *afterwards* to be examined, *becauſe* the Ordinary *had then other Buſineſs*. And there the better Opinion was, That it was a *good Plea* for the Ordinary, *that he did not refuſe* the Clerk, *but that the Clerk did not return* to him again; and that the 6 Months paſſed, ſo as he made the Collation, and that the Patron made his Preſentation too late, ſo as he had not convenient Time to examine him. 3 Le. 46. Mich. 15 Eliz. in C. B. cited by Lord Dyer, as * 14 H. 7. * This is at 14 H 7. 21. b. pl 4. —— S. P. 15 H. 7. 7. a. b. 8. a.

(A. b.) *Diſturbance* by the Ordinary. *What Act* will make the Ordinary a Diſturber.

See (Z. a 2) pl. 1. Marg.

1. IF the Ordinary admits and inſtitutes the Preſentee of the Chancellor, and ſends to the Archdeacon to make Induction, and after the King, before Induction made, ſends an Inhibition, reciting,

That the Church is of the Value of 40 l. per Annum, and ſo it does not belong to the Chancellor to preſent, commands the Ordinary to receive J. S. his Clerk, whom he preſents; if the Ordinary does not ſend to the Archdeacon not to make Induction, but ſuffers the Induction to be made a Month after, he ſhall not be adjudg'd a Diſturber; for there is not any Default in him. 38 E. 3. 4. 9. Adjudg'd.

2. But in this Caſe if the Inhibition had come to the Ordinary before the Warrant made to the Archdeacon to make Induction, if he had made the Warrant after, by which he had been inducted, he ſhould be a Diſturber. 38 E. 3. 3.

3. In Quare Impedit, the Biſhop pleaded, that he *claimed nothing in the Patronage but as Ordinary*; A Writ to the Biſhop is thereupon awarded againſt him, and after *he collates*; This makes him a Diſturber. 8 H. 4. 22. b. 23. pl. 8. Biſhop of Wincheſter v. Rye and Ux.

4. Where a Man preſents, and his *Title is found upon a Jure Patronatus*, and *he ſues to have his Clerk admitted*, and after *another preſents*; there, *if the Biſhop could have admitted and inſtituted the Clerk of him who had the Verdict, and does not, but deferrs it 'till the Lapſe falls, and then preſents his own Clerk*, in this Caſe he is a Diſturber againſt Both the Preſentors; and *Iſſue* ſhall be taken, *Whether he, who preſented and had his Title found, ſued to have his Clerk admitted, or not; and Whether the ſecond preſented to him ſo haſtily that he could not admit the Clerk of the firſt by due Proceſs, before the Preſentation of the ſecond, or not. And ſo the Church is not litigious, but where* * *two preſent ſeverally at one Time, and both Titles are found by diverſe Commiſſions*; or *where one preſents, and his Title is found by Commiſſion, and before that the Biſhop can admit his Clerk, another preſents*, quod nota. Per Newton; if *two preſent* to one Church *at one Time* now the Church is litigious; and there, if after the *Title is found* by Commiſſion, the Hands of the Biſhop are cloſed from taking Benefit by the Litigiouſneſs, unleſs the other ſues a Ne Admittas; for he *is bound in Right to admit his Preſentee for whom his Title is found*; and in this Caſe *Diverſe Commiſſions* ought to be awarded, and the Biſhop *ought to give to the Commiſſioners diverſe Days, and* ought *to warn the one of the Day given in the other Commiſſion*, ſo that they may have Notice to come and give their Evidence, and yet ſuch *Titles found there ſhall not conclude the other Party in Quare Impedit; for it is only Inqueſt of Office.* Br. Quare Impedit. pl. 80. cites 21 H. 6. 44.

* S. P. Per Paſton. Ibid.

Refuſing to award a Jure Patronatus when he is required, makes him a Diſturber.

5. Where *different Perſons preſent their ſeveral Clerks, and the Ordinary accepts the Preſentee of the one without Inquiry De Jure Patronatus*, he is a Diſturber; Per Port. Quod Newton & Markham conceſſerunt. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

Br. Nugation. pl. 3. cites 33 H. 6. 13.—Br. Quare Impedit. pl. 12. cites 33 H. 6. 12.

* Orig. is (Preſent) and ſo are all the Editions.

6. If a *Diſturber preſents, and the Biſhop inquires De Jure Patronatus*, and *another is found Patron*, there, *if he* will *preſent within the ſix Months, the Biſhop is bound to admit his Clerk; but if he does not preſent he ought to* * *admit the Clerk of the Diſturber.* Agreed. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12. & 32. 34 H. 6. 11. 38. and 35 H. 6 18.

7. If there are two Parſons, and *the Biſhop admits the Clerk of the true Patron*, yet *this is no Excuſe in Quare Impedit*; for *it is no Plea, that he was Verus Patronus.* Per Priſot, Quod non Negatur. Contra, If he had inquir'd De Jure Patronatus. Br. Quare Impedit. pl. 12. cites 33 H. 6. 12. & 32. 34 H. 6. 11. 38. and 35 H. 6. 18.

8. Whether if the *Plea of the Ordinary be inſufficient*, he ſhall thereby be a Diſturber? Goldsb. 35. Arg. ſays, It ſeems that he ſhall, and cites 14 H. 7. 21. b. and 5 H. 7. 20.

9. If after *a Jus Patronatus*, he *admits the Clerk of the Patron againſt whom 'tis found*, 'tis at his Peril, both as to the Title itſelf, and ſuch Patron's defending it. And 'tis againſt Juſtice and the Intent of the Law,

to

to put the Party to the Delay and Charge of a Trial, and then act contrary to the Finding. And the Books, which ſay, that the Ordinary is to judge of the better Title, mean, that he *is not to prejudge of his own Head*, but Secundum Allegata & Probata *upon Verdict* given of the Right, and found according to the Form of Law to give Inſtitution, which is his Judgment, and Induction which is his Execution. And if the Patron bring Quare Impedit againſt the Uſurper and Incumbent, not naming the Biſhop, and makes good his Title, he may have an *Action on the Caſe* againſt the Ordinary *for that wilful wrong Delay and Trouble* that he hath put him to, and ſhall recover *Coſts and Damages*, not in reſpect to the Value of the Church (for there is no Damages for that by the Common Law but by the Statute of Weſtminſter 2d.) but for the other Reſpects. But if he *name the Ordinary in the Quare Impedit*, he can have no other Action on the Caſe; neither can he have ſuch Action on the Caſe before he has *tried his Title* in a proper Action, and againſt the proper Parties. Per Hobert Ch. J. Hob. 317. Paſch. 17 Jac. in the Caſe of Elvis v. Archbiſhop of York, Taylor and Biſhop.

10. Biſhop *refuſes a Clerk for Inſufficiency*. Upon Notice the *Patron preſents another*. The Biſhop within the 6 Months admits the firſt. Per Cur. The Biſhop is a Diſturber; for he can't accept afterwards a Perſon refuſed by him for Inſufficiency. Cro. E. 27. Paſch. 26 Eliz. C. B. Biſhop of Hereford's Caſe.

11. Ordinary may examine and refuſe, but both muſt be in convenient Time, elſe by his *Delay* he is a Diſturber. 2 Salk. 539. Mich. 3 W. & M. B. R. Hale v. Biſhop of Exeter. Twenty-two Days held too large Delay. Le. 32. pl. 39. Trin. 27 Eliz. in C. B. Albany v. Biſhop of St. Aſaph.

12. It was objected, That the Biſhop *not giving Notice of Refuſal for Illiterature till* 32 *Days after*, was a Diſturbance Ipſo Facto; but the Court gave no Opinion in this Point. Carth. 312. Trin. 6 W. & M. B. R. in Caſe of Biſhop of Exeter v. Hele.

(A. b. 2) Diſturbance. How puniſh'd. Pleadings &c.

1. *THE Biſhop incumber'd the Church after a* * *Ne Admittas directed to him within the* 6 *Months*, and the Patron brought Quare Impedit, and recover'd, and had Writ to the Biſhop to diſincumber the Church, who ſaid that he had admitted the Plaintiff; Et non Allocatur. The Reaſon ſeems to be, inaſmuch as he travers'd the Incumbrance, and upon the Incumbrance found it was *prayed that the Temporalties be ſeiſed*, as upon Attachment upon Prohibition; & non Allocatur. Br. Quare Impedit, pl. 145. cites 21 E. 3. 3. * Orig. is (Non Omittas) and ſo are all the Editions, but the Year-Book is (Ne Admittat.)

2. Quare Impedit *againſt the Biſhop of N. and others*; and *at the Diſtreſs the Biſhop appear'd*, and the *others made Default*. Chaunt ſaid the Biſhop claims nothing but as Ordinary: Judgment if without ſpecial Diſturbance ſhewn, the Plaintiff aſſign Tort in him. Caund ſaid, We *releaſe* our *Damages*, and pray Judgment and Writ to the Biſhop. But per Babb. This cannot be; for the Damages are *not taxed*, but it *ſhall be recorded that you will not have Damages*; and ſo it was, and he had Writ to the Biſhop. Br. Quare Impedit, pl. 150. cites 10 H. 6. 4.

3. The *Biſhop may be a Diſturber within the* 6 *Months*, and it is no Plea in Quare Impedit or Treſpaſs, to *juſtify by Matter happening pending the Writ*; for it is brought of Diſturbance before the Writ brought, which was a Tort, and cannot be defended by Matter ſubſequent. Br. Quare Impedit, pl. 80. cites 22 H. 6. 28 & 29. Per Newton and Paſton. *As* in Quare Imdedit againſt the Biſhop of R. and W. D. *the Biſhop ſaid* that *he claimed*

claimed nothing but as Ordinary; Judgment if without ſpecial Diſturbance Action may he have, the *Plaintiff ſaid that he preſented his Clerk, and the Officer examined and found him Able, and the Biſhop would not receive him, but preſented within ſix Months one J.* &c. The *Defendant ſaid that he Examined him, and did not find him ſufficiently Letter'd*; and they were compell'd to join Iſſue, *Able or Not able*; quod nota; and *pending the Iſſue the Biſhop Accepted*, Inſtituted and Inducted *him*; and therefore the Plaintiff pray'd his Judgment of Damages; and Judgment was that he recover his Preſentment and Damages, notwithſtanding the Biſhop *alleg'd that it might be* that *the Clerk was Not able at the* Time of the *Examination, and* had *learnt better after*, and yet, becauſe by the Admittance after, he has admitted him Always Able; therefore Judgment as above. Br. Quare Impedit, pl. 22. cites 40 E. 3. 25.

And ſo where *two preſent ſeverally*, and *he preſents by Lapſe*, and after *the one brings Quare Impedit againſt the other*, and he pleads *Ne diſturba pas*, yet the Biſhop may ſhew the Matter. Br. Quare Impedit, pl. 80. cites 22 H. 6. 28. 29.

4. And by ſome, Where the Biſhop pleads *Ne diſturba pas*, yet this ſhall not conclude the Biſhop, but he ſhall ſay that he preſented, and his Title was found by Jure Patronatus, and he preſented his Clerk. Br. Quare Impedit, pl. 80. cites 22 H. 6. 28. 29.

5. Quare Impedit by two *againſt an Abbot and W. C. Proceſs continued to the Diſtreſs, and the Defendants made Default*, and a Writ iſſued *to the Biſhop for the Plaintiffs, which was returned Not ſerved, and Alias and Pluries awarded*, and then the *Biſhop returned, that the 13th of October 1463. J. S. the Parſon* &c. *reſign'd to him, to which he agreed*, and accepted the Reſignation; *and the 4th of December next the Biſhop certified the Abbot then Patron of the Reſignation, and the Church remained void till the 28th of January, by which the Biſhop by Lapſe made Collation to W. C. Clerk*, who was Inſtituted and Inducted; *and after this Writ were delivered to him the 12th July laſt after the Collation by Lapſe.* And by ſome the Certification is not good; for the *Reſignation and Collation were made pending the Quare Impedit.* Per Cur. This *does not appear to the Court*, nor *if W. C. who is preſented be the ſame Perſon* who is Defendant; therefore it ought to be ſhewn by the Plaintiff. And by ſome, He who is Defendant ſhall be bound by the Judgment of the Plaintiff, if he be the ſame Perſon who is preſented; for he is Party to the Writ, and he who purchaſes pending the Writ ſhall be bound: Contrary of the Biſhop here, he ſhall not be bound, for he is not Party to the Writ; and therefore if the Plaintiff will not plead certainly that the one and the other is one and the ſame Perſon, it ſhall be intended that he is a Stranger of the ſame Name; and therefore he averr'd accordingly, and that the Abbot was not Verus Patronus, and there it is agreed, that upon Death of the Incumbent the Biſhop ſhall not give Notice to the Patron: Contrary upon Reſignation. So upon Deprivation; and by the Judgment in the Quare Impedit the Abbot loſt his Patronage, and was not any longer Patron; and therefore the Notice made to him after the Judgment, is not good by ſome. Br. Quare Impedit, pl. 123. cites 5 E. 4. 115.

* It is a good *Plea* to ſay, *that he is Ordinary, and the Church was Litigious.* Brooke ſays, Quære if this be intended good, *without ſhewing that he had awarded a Jure Patronatus* thereof. Br. Quare Impedit, pl. 119. cites 7 E. 3.

6. The *Biſhop ſaid that he claimed nothing but Admiſſion and Inſtitution as Ordinary*; Judgment if without alleging ſpecial Diſturbance &c. Action lies; and the *Plaintiff alleg'd Preſentation to the ſaid Biſhop ſuch a Day, and he refuſed, and ſo diſturb'd* &c. and then the *Biſhop ſhew'd that the Church before this Preſentation was * litigious by Preſentment before made by one N.* And it was ſaid there, that upon the firſt Plea the Plaintiff might have Writ to the Biſhop; contrary upon the ſecond Plea, and ſee the Pleading of thoſe Pleas there. And per Cur. The firſt Plea is a good Plea. Br. Quare Impedit, pl. 119. cites 5 H. 7. 19.

7. In Quare Impedit *againſt the Biſhop of C.* the *Plaintiff counted how he was ſeiſed of the Advowſon, and preſented N.* who was Admitted and Inſtituted &c. *and after N. died, and the Church voided by 6 Months, and the Biſhop made Collation to one M. by Lapſe, who was in, and after died*, by which the Church voided, and the *Plaintiff preſented* &c. The *Defendant ſaid that J. B. preſented this ſame M. to the Defendant as Ordinary*,

dinary, at whoſe Preſentment he received him as Ordinary, by which he was Inſtituted and Inducted, *Abſque hoc, that he made Collation modo & forma prout the Plaintiff ſuppoſes.* And per Keble, Fineux, Townſend and Brian Ch. J. this is a *good Plea for the Ordinary to ſhew that another is Patron and not the Plaintiff*, tho' he does not make to himſelf Title to the Advowſon; for the Ordinary has Intereſt to meddle with the Church, as in Aſſiſe of Rent the Tenant ſhall compel the Lord to make to himſelf Title to the Rent; *for there is Privity* between them and *between the Ordinary and the Patron*; As in Waſt the Tenant may ſay that the Leſſor has granted the Reverſion to J. F. to whom he has attorn'd. So of a Seigniory granted &c. And ſo, that a Stranger has recovered the Seigniory againſt the Lord; for *the Ordinary may traverſe this Thing alleg'd againſt him, which proves him to be a Diſturber, without alleging Title in the other Perſon.* And Per Rede, Jay, Vaviſor and Davers, This is no Plea; for he does not plead as Ordinary, as to ſay that he claims nothing but Admiſſion, Inſtitution and Induction as Ordinary; Judgment if without ſpecial Diſturbance &c. or to ſay that he Ne Diſturba pas; for then the Plaintiff ſhall have Writ to the Biſhop immediately, or to ſay that the Church is Litigious, or that his Clerk is Criminoſus, but cannot intitle a Stranger without intitling himſelf. But Brian and Townſend Contra; for otherwiſe there ſhall be a Miſchief, that the Biſhop ſhall be bound to admit the Clerk of whomſoever will preſent to him, which is not Reaſon: Et adjournatur; for the Ordinary has lawful meddling with the Church, As the Tenant has with the Seigniory or Reverſion. Br. Quare Impedit, pl. 120. cites 5 H. 7. 33.

(B. b) * Admiſſion. † Inſtitution and ‡ Induction. *Of what Things* it ſhall be made.

1. A Donative **may paſs by Gift of Lay Patron without Inſtitution or Induction.** Da. 1. 46. b.

* *Admiſſion is* when the *Biſhop* upon Examination admits him to be able, and *ſays Admitto te habilem.* Co. Litt. 344. a.——S. P. Fin. Law 8vo. 89.—S. P. Godolph. Rep. 272. cap. 24. S. 6.

† *Inſtitution is* when the Biſhop ſays, *Inſtituo te Rectorem talis Eccleſiæ cum Cura Animarum & Accipe Curam tuam & meam.* But ſometimes in a more large Senſe *Admiſſus doth include Inſtitutus* alſo; Cujus præſentatus ſit Admiſſus, i. e. Inſtitutus. Co. Lit. 344. a.——S. P. Fin. Law 8vo. 89.—S. P. Godolph. Rep. 274. cap. 24. S. 8.

‡ *Induction is* nothing elſe but the Putting of the Perſon into Actual Poſſeſſion of the Church and Glebe, which are Temporalties of the Church, or the Making of a Clerk Compleat Incumbent of the Church; This is Induction, and it is by Letters from the Biſhop of the Dioceſs directed to all and ſingular the Clerks, Rectors, Vicars &c. within the ſaid Dioceſs, to put the Clerk or his Lawful Attorney for him, and in his Name, into the actual Poſſeſſion of the Church to which he had been Preſented and Inſtituted, together with all the Profits, Dues, Members and Appurtenances whatſoever thereunto Belonging or Appertaining; of the due Execution whereof a Certificate endorſed on the Inſtrument of Induction, and ſubſcribed by a competent Number of Witneſſes, ought to be returned to the ſaid Biſhop as Ordinary, who may appoint the Archdeacon to give Induction. Godolph. Rep. 278. cap. 24. S. 16.

Induction is done in the following Manner; one of the Clergymen commiſſioned takes the Perſon to be Inducted by the Hand, lays it on the Key of the Church, and pronounces thoſe Words, By Virtue of this Commiſſion I Induct you into the Real and Actual Poſſeſſion of the Rectory of &c. with all its Appurtenances; then he opens the Church-door, and puts the Parſon into Poſſeſſion thereof, who commonly tolls a Bell &c and thereby ſhews and gives Notice to the People that he had taken Corporal Poſſeſſion of the ſaid Church. If the Key of the Church-door cannot be had, the Clerk to be Inducted may lay his Hand on the Ring of the Door, the Latch of the Church-Gate, on the Church-Wall &c. and either of theſe are ſufficient. So it may be by Delivery of a Clod of the Glebe &c. Jac. Law Dict. Verbo Induction. Cites Country Parſ. Comp. 21. 22.

2. **In the** King's Chapel at Weſtminſter, **when a** Prebend **is void, the King ſhall make** Collation by a Patent **to whom he pleaſe, and ſend him with it, and by Force thereof he ſhall take Poſſeſſion.** 11 H. 4. 9. **(Without any Inſtitution or Induction is implied.)** Br. Preſentation, pl. 13. cites 11 H. 4. 7.

3. **If the** King grants a Free Chapel **to another, he ought to be** *put in Poſſeſſion by the Sheriff. 14 H. 4. 11. b. * Fol. 357.

Godolph. Rep. 279. cap. 24. S. 16. S. C. and P. Watſ. Comp. Inc. 8vo. 276. cap. 15. cites S. C.

4. If a Clerk be preſented, he has not Poſſeſſion before Induction. 11 H. 4. 9. Com. *Harc Buck* 528.

5. If the Biſhop of Sarum be Patron of the Church of S. which is Preſentative, and lies within the Dioceſs of Sarum, and it is the Corps of a Prebend in the Church of Sarum, and the Biſhop of Sarum is alſo Patron of the Church of D. which is Preſentative alſo, and lies within the Dioceſs of Winton, and after the Church of D. is united to the ſaid Prebend, with the Aſſent of the Biſhop, and Dean and Chapter of both Dioceſſes. By this Union both Churches are ſo annexed and united, that if the Biſhop of Sarum collates a Clerk to the Prebend, and he is thereupon inſtall'd in the Cathedral Church of Sarum, he has thereby Poſſeſſion of both Churches without any Preſentation, Admiſſion, Inſtitution or Induction to, or by the Biſhop of Winton; for inaſmuch as he has Poſſeſſion of the Prebend, he thereby has Poſſeſſion of the Corps of the Prebend, and by the Union the Church of D. is Parcel of the Body of the Prebend. P. 10 Car. B. R. between *Leigh and Hellier* upon Evidence at Bar in an Ejectione Firmæ, upon the Trial of a Title of a Leaſe made by ſuch Prebendary before the Statute of 13 El. of the Church of D. which was not confirmed by the Biſhop of Winton, but only by the Biſhop, Dean and Chapter of Sarum; and this held per Curiam to be good for the Cauſe aforeſaid.

6. By the Laws of England the Acts of Preſentation, Inſtitution and Induction *are* all *Authorities given by Law, and muſt be executed according to the Form preſcribed by Law*, and cannot be modified; for Actus legitimi non recipiunt Modum. For the Law gives the Church, and not the Patron and Ordinary, who are but Ceremonious Miniſters, and are appointed their Manner and Form, which they may neither Exceed nor Abridge. Hob. 153. in Caſe of Golt and Glover v. Biſhop of Coventry.

(C. b) *By whom* it ſhall be *made*. Admiſſion. Inſtitution. Induction.

It is not only *Penal* for the Biſhop to inſtitute, but the Inſtitution is void; becauſe it is an Act of Juriſdiction, from which he is ſuſpended. *But* it may be a Queſtion in Caſe of *a Collation*, whether if a *Lapſe* happen the Biſhop may collate? But the better Opinion is, he cannot; becauſe it is not by way of *Intereſt*, but by way of *Proviſion for the Cure*, and to ſupply the Negligence of the Patron This appears, becauſe the Patron may preſent at any time after a Lapſe, and before Collation. 3 Salk. 202. cites Paſch. 13 Car. B. R. Lunne v. Dodſon ——— Cro. C. 475 S. C. and becauſe this and another Point there concerned Eccleſiaſtical Juriſdiction, the Court required to hear Civilians, and it was argued accordingly; but the other Point being clear for the Defendant, Judgment was given for him upon that Point, and then this not being material, nothing more is there ſaid about it.

1. If Archbiſhop viſits his inferior Biſhop, and inhibits him during the Viſitation, if the Biſhop has Title to collate to a Benefice within his Dioceſs by cauſe of Lapſe, yet he cannot inſtitute his Clerk, but ought to preſent to the Archbiſhop, and he ought to inſtitute him, becauſe during the Inhibition his Power of Juriſdiction is ſuſpended. Trin. 13 Car. B. R. between *Dodſon and Lynn*. This was a Point upon a ſpecial Verdict in the County of Lincoln, and the Civilians who argued this ſeemed to agree it, but the Caſe was argued upon another Point, and this not reſolved. Intratur Tr. 11 Car. Rot. 446.

Watſ. Comp. Inc. 8vo. 274 cap. 15. cites S. C. But the Biſhop may direct his Mandate to ſuch other Clergymen as he pleaſes to make Induction, and cites Parſons Counſellor 8.—The Archdeacon having received a Mandate for Induction makes a Precept Omnibus Literatis infra Archidiaconatum to induct, a *Clerk not belonging to the Archdeaconry* made the Induction, and held to be well enough. Arg. Vent. 320. Mich. 29 Car. 2. B. R. in Caſe of Robinſon v. Wolly. Cites Noy's Reports. But ſays, (Quære that Caſe)

2. The Ordinary ſhall ſend to the Archdeacon to make Induction. 38 E. 3. 3. b.

3. The Archdeacon ſhall make the Induction. 38 E. 3. 3. b.

4. By

4. By Preſcription the Dean and Chapter of Lichfield make Induction. 11 H. 4. 9. Godolph. Rep. 278. cap. 24. S. 16. cites S. C.——Watſ.

5. So of the Dean and Chapter of Pauls. 11 H. 4. 9.

Comp. Inc. 8vo. 275. cap. 15. cites S. C. And that if Induction be made by the Archbiſhop when it appertains to the Dean and Chapter by Preſcription, that Induction is ſaid to be void, 11 H. 4. 9. but the contrary is held Fitzh. tit. Quare Impedit 162, that in ſuch Caſe it is only voidable, and ſo reſolved. Hill 36 & 37 Car. 2. C. B. 3 Lev. 211. in Caſe of Wrighton v. Brown.

6. An Induction made by the Biſhop is * void, where it belongs to the Dean and Chapter by Preſcription. 11 H. 4. 9. b. Contra. 14 H. 6. Quare Impedit 162. Adjudged of a † Prebend. S. C. cited 3 Lev. 212. in Caſe of Wrighton v. Brown.——

* *But* Br. Executions, pl. 32. cites 11 H. 4. 7. 9. ſays it is *good* at the Common Law.—Br. Preſentation, pl. 13. cites S. C. accordingly; becauſe he is Officer and Ordinary immediate to the Court, and the Court will not take Conuſance of Peculiar Juriſdictions.——Godolph. Rep. 278, 279. cap. 24. S. 16. cites S. C.

† Induction of a *Prebendary* muſt be by the Dean and Chapter, and not *by* the Archdeacon. Pl. C. 329. in Caſe of Hare v. Bickley.

7. An Induction by the Patron is void. 11 H. 4. 10. Godolph. Rep. 278, 279. cap. 24. S. 16. cites S. C.——Watſ. Comp. Inc. 8vo. 275. cites S. C. and Parſons Counſellor 8. But Dr. Watſon ſays, he ſuppoſes this is to be underſtood where it is done of his own Authority; For he ſays, he doubts not but that a Biſhop may give Induction as well as Inſtitution to a Benefice of his own Gift where the Right of Induction to a Benefice within his own Dioceſs is in him; or however that an Archdeacon may induct to a Benefice within his Archdeaconry, although he be Patron thereof; nevertheleſs, the Rule is, Modus & Conventio Vicunt Legem, and therefore De Jure Communi neither Biſhop nor Archdeacon may induct a Clerk to their Benefices of which they are Patrons, yet by Preſcription or Compoſition their Induction in ſuch Caſe muſt be good. And accordingly, though the Biſhop of Chicheſter does admit the Dean of the exempt Juriſdiction of Battel within that Dioceſs, and does commit to him the Cure and Juriſdiction of that Church, yet the Patron thereof is to inſtitute and induct the Dean, and the Patrons accordingly have given the Deans Inſtitution and Induction for ſome Hundreds of Years; and without Queſtion ſuch Inſtitution and Induction is good; but this Deanry was originally given to the Incumbent as a Donative only by the Patron, and the Biſhop admits or approves of the Patron's Preſentee, and commits to him the Cure and Juriſdiction by Compoſition only. Watſ. Comp. Inc. 8vo. 275, 276. cap. 15.——R S. L. 4 Vol. 17. S. P.

8. The King's Grantee of a free Chapel ſhall be put in Poſſeſſion by the Sheriff of the County, and not by the Ordinary of the Place. 14 H. 4. 11. b. Godolph. Rep. 279. cap. 24. S. 16. cites S. C. and P.

——Watſ. Comp. Inc. 8vo. 276. cap. 15. cites S. C.

9. A. and B. *two Patrons, pretend a Title* to preſent. *A. preſented*; the *Biſhop refuſed*; whereupon *A. ſued* in the Audience, *and had an Inhibition* to the Biſhop. *And afterwards*, upon that Suit he *obtained Inſtitution and Induction by the Archbiſhop*; after which the inferior *Biſhop* inſtituted and *inducted the Clerk of B.* Whereupon Proceſs iſſued out of the Audience againſt the inferior Ordinary. Thereupon a Prohibition was prayed, becauſe the Eccleſiaſtical Court ought not to intermeddle after Inſtitution and Induction; For this would be to determine the Incumbency. And therefore *Quoad the Incumbency the Prohibition was granted*; *but not quoad the Contempt of the inferior Ordinary* in granting Inſtitution after he had been inhibited. Moor 879. pl. 1235. Trin. 15 Jac. Middleton v. Lawte.

10. Tho' the *King* may preſent to a Church, yet he ſhall not collate, admit, nor inſtitute; for he cannot exerciſe the Spiritual Function. And if he brings Qua. Imp. againſt the Biſhop and recovers, he ought not himſelf to make an Admittance, but muſt ſend his Writ to the Biſhop to do it. Arg. 2 Bulſt. 4. in Caſe of Stevenſon v. Wood.

11. The *Biſhoprick* of Glouceſter being *void*, and the *Archbiſhop* of Canterbury *Guardian of the Spiritualties, a Church became void.* The *Patron preſented* to the *Archbiſhop*, who admitted and inſtituted the Clerk, and *granted Mandate to the Archdeacon for Induction*, which was by an Inſtrument directed to certain Parſons, as uſual, to do it. They omitted the S. C. argued, Vent. 309. Paſch. 29 Car. 2. and Ibid. 319. Mich. fol-

lowing it was argued again, and adjudged, that the Induction was void. —— 2 Jo. 78. S. C. adjudged; but Ibid 79. ſays, it was afterwards reverſed in the Exchequer Chamber. ——See 3 Keb. S. C.

the doing it for 2 or 3 Months, and in the mean time *a Biſhop of Glouceſter is made and conſecrated, and afterwards the Parſons made the Induction.* Adjudged per tot Cur. that the Induction is void; For though it belongs to the Office of Archdeacon, yet his doing it is only by Mandate and Authority of the Biſhop, and they held it to be no more than if a Man makes a Letter of Attorney to make Livery and dies, and the Attorney makes Livery after his Death. 2 Lev. 199. Trin. 29 Car. 2. B. R. Robinſon v. Woolley.

Fol. 358.

(D. b) *What* Thing ſhall *amount to* Inſtitution and Induction.

1. THE Proviſion of the Pope **is as an Inſtitution.** 11 H. 4. 76. b.

2. And when **the Clerk is** put in Execution **by force of the Proviſion, it ſhall be as an Induction by Force of the Bulls.** 11 H. 4. 76. **b.**

3. A Parſon, Vicar, or Chauntery Prieſt may be admitted and inſtituted he not knowing it. As if the Patron ſends to the Biſhop to admit his Clerk, and he agrees to it; and if *the Biſhop ſays, in the Abſence of the Clerk, to J. N. I admit thee to the Church of D. in the Name of the Clerk*, this Admiſſion is an Inſtitution though the Clerk be abſent; but there he may refuſe, becauſe he was abſent at the time &c. Br. Quare Impedit, pl. 155. cites 32 H. 6. 28. by a Doctor of the Law.

4. Where a *Recovery is in Qua. Imp. and* the *Biſhop* upon Preſentment will admit and inſtitute *his Clerk*, and he *is inducted*, and this without any Writ to the Biſhop, This is good, as well as a Man may enter without an Habere facias ſeiſinam after Recovery. Hutt. 66. the third Reſolution in the Caſe of Rud v. Biſhop of Lincoln.

(D. b. 2) Admiſſion, Inſtitution, or Induction. *Good. And the Effect* thereof.

1. PErſona Eccleſiæ numquam dicitur *Imperſonata* ante Inductionem; nec habet Jus in Re, ſed ad rem, ante Inductionem. D. 221. b. pl. 19. cites Hill. 38. E. 3. Per Thorp.

But it was ſaid, That *Writ of Right of Advowſon* does not lie *without Induction*; For he ſhall allege the Eſplees, as in Great Tithes and Small Tithes &c. Br. Quare Impedit. pl. 1 cites 22. H. 6. 27 —— S. P. Ibid. pl. 10. cites S. C. & 33 H. 6. 24.—S. P. Br. Ibid. pl. 83. cites 22 H. 6. 25.

2. Note that a common Perſon may *have Quare Impedit* againſt another, though his Clerk was not inducted; For the Entry is there, Quod admiſſus & Inſtitutus fuit. Br. Quare Impedit, pl. 1. cites 22 H. 6. 27.

The Clerk ſhall not have the Profits before Induction, but the *Ordinary ſhall ſequeſter* them. Per Nichols J. Roll. R. 461. Paſch. 14 Jac. in Cam. Scacc in the Caſe of Colt v. Glover —— Inſtitution intitles the Parſon to the *ſpiritual Profits* as Oblations &c. before Induction, and he is liable to be ſued for neglecting the Cure, but he can *not* ſue for *Great Tithes*, For they are Temporal. 11 Mod. 46. pl. 12. Paſch. 1705. B. R. Anon.

3. The Incumbent has *no Remedy for* the *Profits*, *nor can* he *try* his *Right, till Induction*. Per Popham. Cro. E. 653. Hill. 41. Eliz. C. B. in the Caſe of Quarles v. Fairchild.

4. Ad-

4. Admiſſion, Inſtitution, and Induction *without a Preſentation is void.* 6 Rep. 29. b. Trin. 44 Eliz. B. R. Green's Caſe. S. P. Adjudged accordingly.

Cro. J. 252. Mich. 8. Jac. B. R. **Hunſton v. Cocket**, and cites S. C. — S. C. Cro. C. 99. 100 Mich. 3 Car. in Caſe of **Stephens v. Potter**, and ſays it was reſolved accordingly, Anno 8 Jac. in C. B.—S. C. cited Arg. Gibb. 32. Paſch. 1 Geo. 2. B. R. in the Caſe of the King v. the Archbiſhop of Armagh — and cites Cro. J. 252. Hunſton v. Cocket. S. C. cited Gibb. 34. But ſays that it is to be underſtood, that they do not put the rightful Patron out of Poſſeſſion, but that he may at any Time preſent or bring Quare Impedit, and ſo it is taken in Lord Hobart 301, 302. which proves that **Hunſton and Cockett's** Caſe, which is founded on **Green's** Caſe miſtook that Reſolution; therefore though the King might notwithſtanding ſuch Collation either preſent or remove the Incumbent by Quare Impedit, any time during the Life of ſuch Incumbent, yet it does by no Means follow, that the Collatee was not a compleat Incumbent during his Life if not removed, and cites Cro. E. 207. 240. Dy. 293, 294.

5. If a *Gift be made to a Parſon before* Induction, it is good. Arg. Goldsb. 163. in the Caſe of Robins v. Prince.

6. If he *alien by Conſent of Patron and Ordinary* before Induction, it is good. Arg. Goldsb. 163. in the Caſe of Robins v. Prince.

7. Before Induction he is not Patron to all Intents; For a *Grant of Annuity* before Induction is not good. Per Gawdy. J. Goldsb. 163. in the Caſe of Robins v. Prince. Cites Pl. C. 526.

8. He, who is inſtituted, *may enter into the Glebe* Land *before Induction*, and has Right to have it againſt any Stranger. Per Coke. Roll. R. 192. Paſch. 13 Jac. B. R. in the Caſe of Hitching v. Glover. *But* before Induction he *has no Eſtate* in the Glebe, nor can he receive any Tithes as Incumbent. Watſ. Comp. Inc. 8vo. 241. cap. 13. cites 28 E. 3. 9. 26 H. 8. cap. 15. cites S. C. & 38 E. & 3, 4 & 22 H. 6. 27.

9. By Inſtituion the Incumbent has *Officium*, but *Beneficium* comes by Induction. Per Doderidge. J. Poph. 133. Mich. 15 Jac. B. R. in Rone's Caſe. Inſtitution gives the Cure of Souls, but the Temporalties paſs by Induction, Arg. Pl. C. 528. in the Caſe of Hare v. Bickley — Watſ. Comp. Inc. 8vo. cap. 15. cites S. C. & 38 E. 3. 4. & 22 H. 6. 27.

10. By Inſtitution *habet Curam Animarum*, the Words of the Inſtitution being Inſtituo te habere Curam Animarum, Curam tuam, & meam; So that Curatus implies a Parſon Inſtituted. Per Doderidge J. which Whitlock J. & Crew Ch. J. agreed 3 Bulſ. 310. Mich. 1 Car. B. R. in the Caſe of Wrothmeal v. Gill. S. P. Goldsb. 163. in the Caſe of Robins v. Prince.

11. It was held, That *Letters of Inſtitution ſealed with another Seal* than that of the Biſhop of the Dioceſe, *and made out of the Dioceſe* were good enough; For the Seal is *not material*, it being an Act made of the Inſtitution, and the Writing and Sealing is but a Teſtimonial thereof, which may be under any Seal or in any Place; But they would adviſe. Cro. C. 242. Hill. 9 Car. B. R. in the Caſe of Cort v. the Biſhop of St. Davids. But Vent. 16 Paſch. 21 Car. 2. B. R. in Caſe of **Heath v. Bryn** ſays, it ſeemed by the Court that Letters of Inſtitution muſt be under the Epiſcopal Seal.

12. A Preſentation may be *without Inſtitution and Induction*, the Biſhop being Party. Reſolved. Cumb. 302. Mich. 6 W. & M. B. R. in the Caſe of the Queen v. the Biſhop of London and Dr. Birch.

(D b. 3) Admiſſion, Inſtitution, or Induction. *Triable how*; And *Puniſhment of Refuſing* them.

1. ADmiſſion and Inſtitution ſhall be try'd *by the Ordinary*, but *Induction* ſhall be made by the Archdeacon, and ſhall be tried *Per Pais*. Br. Quare Impedit. pl. 155. cites 32. H. 6. 28.

2. Induction is triable *by the Country*, and not by the Biſhop. Pl. C. 529. b. in the Caſe of Hare v. Bickley—cites 21 E. 4. 7. & 33.

A. ſued a *Quare Impedit* againſt B. and Pending it B. was

3. Matters of Induction, and the Validity thereof, are triable *at Common Law*, and not in the Spiritual Court. Bulſ. 179. Trin. 9 Jac. Holt's Caſe.

Inſtituted and Inducted, and A. ſued B. in the Spiritual Court to *Remove him*, and a Prohibition was prayed, becauſe he cannot ſue for the ſame Cauſe Duplici Foro; and 2dly, Becauſe it is a Suit after Induction, and upon this laſt Point the Court granted a Prohibition. Lat. 205. Trin. 3 Car. Oliver v. Huſſey.

It was adjudged, that Action upon the Caſe lies againſt an Archdeacon

4. If the Biſhop refuſes to give Inſtitution, the Clerk may have a *Quare Impedit*, or *Duplex Querela* to the Archbiſhop for it, but Action ſur Caſe will not lie againſt him. Roll. R. 64. in Caſe of Powle v. Godfrey.

who refuſes to induct, but not againſt the Ordinary who refuſes to inſtitute; becauſe there a Quare Impedit lies, or Duplex Querela before the Metropolitan. Mo. 836. pl. 1126. Mich. 12 Jac. Pole v. Godfrey

If the Archdeacon refuſes to induct a Clerk &c. he ſhall have an Action upon the Caſe. Cited 12 Rep. 128. as Fitzh. 47. H. 6. S. and affirmed for good Law by all the Court, and that with this agrees 26 H. 8. 3. a. True it is, that it is held in 38 H. 6. 14 that in ſuch Caſe he ſhall have Remedy againſt the Archdeacon to puniſh him, but ſaving the Opinion there, they cannot award him Damages in ſuch Caſe, but he ſhall recover them at Common Law. 12 Rep. 128.

(E. b) *Reſignation. By what Words* it may be.

This in the Margin is ſaid to be the Caſe of Walrond v. Pollard

1. THE Word Reſignare **is not the proper Term of the Law for Reſignation, but** Renuntiare, Cedere, **and** Dimittere **are the uſual Terms of Reſignation.** D. 13 El. 294. b.

——And Ibid. 294. a. Marg. pl. 6. cites Hill. 20 Jac. B. R. **Fairchild v. Gayer,** where the Civilians held, that Reſignare is not a good Word of Reſignation, but the Judges Contra.

2. **If a** Prebendary gives Grants, Renders and Confirms to the Ordinary his Prebend, and the Poſſeſſions **appertaining thereto, to have and** to Hold to him and his Succeſſors in Fee, and **ſubjects and** ſubmits to him Omnia Jura **by reaſon thereof** Qualitercunque acquiſita, **thoſe Words are ſufficient and amounting to a Reſignation, tho' the proper Words are not therein.** D. 13 El. 294. b.

Watſ. Comp. Inc. 8vo. 47. cites S. C.

3. A Reſignation was made, and afterwards in the ſame Inſtrument a *Condition was inſerted*, declaring it void, if A. or B. were not admitted by Aſſent of the Biſhop within 6 Months. The Biſhop within the 6 Months refuſed to accept the Preſentation. It was inſiſted, that it is againſt the Nature of a Reſignation to be Conditional, and that it muſt be Abſolute, Sponte, Pure, and Simpliciter, and that this is an Act judicial to which a Condition cannot be annexed; And Judgment was afterwards given accordingly. Ow. 12. 34 Eliz. C. B. Gayton's Caſe.

4. One that had a *Donative* made a Reſignation thereof by the Words *(de Eccleſia.)* Per tot. Cur. this Reſignation extends to all the Poſſeſſions; For as the Donation to the Church extended to inveſt him with all the Poſſeſſions, ſo the Reſignation extends to the ſame. Cro. J. 63, 64. Paſch. 2 Jac. B. R. Fairchild v. Gayre.

(F. b) *To whom* it may be.

See Preſentation, Parſon &c. (R) pl. 2.

1. A **Reſignation ought to be** to the immediate Ordinary, **and not to the mediate Ordinary.** D. 13 El. 294. b.

For it is a Rule in the Canon Law, that *Apud eum fieri debet Renunciatio, apud quem pertinere dignoſcitur Confirmatio.* Godolph. Rep. 284. cap. 25. S. 3.——S. P. Dod. of Adv. 81. Lect. 15.—— A Reſignation (eſpecially of a Benefice with Cure) cannot be made to void the ſame by the ſole Act of the Incumbent, but the Ordinary muſt for that End alſo accept it, and declare the Church void; and till then the Patron's New Preſentation will be null; and the Reaſon of the Law in this Caſe is partly becauſe the Ordinary is to give Notice of a Reſignation to the Patron, and that he may preſent again, and if he do not within 6 Months after Notice, that the Ordinary may provide for the Church; but more eſpecially, I ſuppoſe, becauſe the Biſhop having Cure of all Souls within his Dioceſs, is to ſee that the Paſtors to whom he has committed, and who have undertaken the Cure, and in whom thereby the People have an Intereſt, do not without a reaſonable Cauſe leave their Charge; that it be not for Money &c. or to live a Lay-Converſation, which he is not to ſuffer. Watſ. Comp. Inc. 8vo. 68. cap. 5.

2. A Prebendary **cannot reſign** to the King, **becauſe though he be the ſupreme Ordinary, yet he is not the immediate Ordinary, and he is not bound to give * Notice to the Patron as the Ordinary ought, nor can make Collation of himſelf, but ought to preſent to the Ordinary.** D. 13 El. 294. b.

Watſ. Comp. 8vo. 49. cap. 4. cites S. C. and Dyer 294. **Pollard v. Walrond.**

* S. P. Dod. of Adv. 81. Lect. 15——Reſignation *to the King by a Dean* of Wells, was adjudged good and effectual, in as much as he was Head of the Church of England, and as good as if it had been made to the Biſhop, and the Deanry was void thereby. Adjudged, Niſi. D. 293. b. Mich. 12 & 13 Eliz. Pollard v. Walrond.

3. Reſignation cannot be but to a *Superior*; per Coke; Quod Haughton Conceſſit. And per Coke, a Biſhop cannot reſign to the Dean and Chapter. Roll. R. 137. Roll. R. 137. Hill. 12 Jac. B. R. Anon.

Watſ. Comp. Inc. 8vo. 49. cap. 4. cites S. C.

4. Where *two Perſons have the Donation of a Donative* as Founders, a *Reſignation to one* of them is good. Reſolved. Cro. J. 63. Paſch. 3 Jac. B. R. Fairchild v. Gayer.

Watſ. Comp. Inc. 8vo. 49. cap. 4. cites S. C.—— And being made to one of the Patrons and a Stranger, yet it is good to both Patrons, and void to the Stranger, and eſpecially it being made (Et quibuſcunque aliis Perſonis, who have Intereſt &c.) Yelv. 60. S. C.—— Brownl. 201. S. C.

(F. b. 2) *How* Reſignation may be. And *when*; *And the Effect* therof.

1. IF *two Parſons* reſign *Cauſa Permutationis*, the Church is not thereby void; for this is not Abſolute, but Conditional. 3 Bulſ. 218 Arg. cites 4 E. 3.

2. In Scire facias upon an *Annuity* recovered *againſt a Parſon*, the *Defendant ſaid, that ſuch a Day* &c. *at B. in another County, he reſigned into the Hands of the Biſhop of L. Ordinary there, who accepted it, and ſo it remains in the Hands of the Biſhop*; Judgment of the Writ, and no Plea; for it is only Argument, and ſo it ſeems that he *ſhall ſay*, that *Not Parſon, or traverſe that he was Not Parſon the Day of the Writ purchaſed nor after.* Br. Traverſe per &c. pl. 223. cites 7 E. 4. 15, 16.

3. *Re-*

See Estate, (Q. a. 10)

3. Resignation or Deprivation *shall not abate the Writ*, and yet such Acts by a Parson, Prebend &c. *shall avoid Leases made by him* who resigns or is deprived. Br. Deposition, pl. 8. cites 15 Ass. 8.

11 Mod. 276. Hill. 8 Ann. B. R. Riley v. Adams.—

4. If an Incumbent resigns, yet till the *Ordinary agrees* thereto he remains Incumbent still. Arg. Lane 4. Mich. 3 Jac. in Case of Bret v. Johnson.——Cites it as lately so adjudged in C. B.

And if a Presentation be made by the Patron before the Agreement, and the Bishop admits, institutes and inducts upon such Presentation it is void; For the Church was full. Cro. J. 197. Mich. 5 Jac. B. R. Faine v. .... ——It only puts the Freehold in *Abeyance* till the Ordinary accepts. Arg. 3 Mod. 197. in the Case of **Thompson v. Leach**, cites Cro. J. 198. D. 294. Br. tit. Bar. 81. Yelv. 61. Sid. 387.——Resignation *to a Proctor* makes not the Church void till it be accepted by the Bishop, *and acknowledged* by him; so that a Presentation in the mean time is void, and special Verdict finding an Instrument under Seal of the Bishop, on which was indorsed, that the Resignation was acknowledged and *accepted by the Bishop* is not an absolute Finding that it was a Resignation in facto. Noy. 147. Smith v. Fox.

5. After a Clerk has *taken Institution*, he *may avoid* the Church again *by Resignation before Induction.* Watson. Comp. Inc. 8vo. 50. cap. 4.

(G. b) Voidance. *Dispensation. In what Cases* the Dispensation *of the Pope shall prevent a Voidance.*

The *King* brought Quare Impedit against R. Bishop of Sarum, and H. C. Bishop

1. **If the Pope has** granted to an Incumbent, being a Bishop elect **before Consecration**, that he shall retain **the Benefice with the Bishoprick, yet this shall not prevent the Avoidance; For it is void by the Common Law, and the Pope could not change the Law. Dubitatur.** 11 H. 4. 38. 59. 76.

of St. D. of the Prebend of C. in the Church of Sarum, and *counted that M Bishop of Sarum, presented* this same *H. C. now Bishop of St. D. to the* said *Prebend, and after the Bishop was translated to Bath and Wells*, by which the Temporalties came to the Hands of the King, and after the said H. C. Prebendary was made and created Bishop of St D. by which the Prebend voided &c. (For it was agreed, that where an Incumbent is created a Bishop, that his ancient Benefices are void in Fact immediately; For Sovereign cannot use the Office of a Subject; Quod Nota.) and the *Bishop of Sarum made Bar as Patron* as above, *by which he made Collation, absque hoc that the Prebend voided the Temporalties being in the Hands of the King*, and *the Incumbent S. Bishop of St. D. said*, that *the Bishop of Sarum presented him, by which he continued Possession, absque hoc, that the Church voided the Temporalties, being in the Hands of the King*, & non allocatur without making Title, by which he *said, that before he was created a Bishop the Pope granted to him to retain his ancient Benefices, by which he retained it* &c. And there it is agreed by Thirn, Hill, and Culpeper, that the Grant of the Pope cannot change the Law of England, and after the *King left his Count in another Term, and counted upon the Statute of Provisions*; and per Hank and Thirn, this Grant to retain is no Collation, Reservation nor Provision, and therefore out of the Case of the Statute; but Hill and Culpeper contra; And per Hill, the *King is Patron paramount* the Bishop, tho' the Bishop be immediate Patron; and it was agreed, that by the Creation into a Bishop *the Church is void in fact immediately*, and the Patron may present. Br. Quare Impedit, pl. 51. cites 11 H. 4. 37. 59 ——Br. Preroative, pl. 14. cites S. C. and says, Quære de toto.——Vaughan Ch. J. says, Their Meaning is to be learned, who say, that an Incumbent's Benefice is void by the Common Law, and not by the Canon Law upon his being made a Bishop. The Words of Thirning, who was Ch J. in this Case of 11 H. 4. are, "That he supposed, that when a Man benefic'd is made a Bishop, it is by "the Law of Holy Church that his Benefice becomes void; and that the same Law which give the "Voidance, may cause that it shall not be void, and that that concerns the Power of the Pope." And Vaughan says, The Common Law does not prohibit Pluralities, nor make a Voidance of his Benefice when the Incumbent is Bishop, but it is by the ancient Ecclesiastical Law of England. Vaugh. 22. in Case of Edes v. Walter, Bishop of Oxford.

2. In a Quare Impedit, the *Defendant pleaded in Bar the Statute* 21 *H.* 8. that if the Incumbent hath a Benefice with Cure of the yearly Value of 8 l. and is inducted into another &c. the first shall be void, and alleg'd that the former Incumbent had &c. The Plaintiff replied the Statute 25 H. 8. that a Chaplain to an Earl might have a Dispensation to hold two Livings, and that the former Incumbent was such. And the Question was, Whether the *Pope before that Statute could grant such Dispensations at Common Law*; and it was argued that he might, for at first

every

every Biſhop had Power to grant Diſpenſations for Pluralities, till they by their Indiſcretion loſt their Power, and it was abrogated by a General Council held Anno 1273. to which Council this Nation ſent two Biſhops; and this Conſtitution has been received ſince till H. 8.'s Time; But the Court did not ſpeak to it; but the Plaintiff was ſo diſcouraged that he would not proceed. And ſic pendebat. Mo. 119. pl. 264. Mich. 24 & 25 Eliz. Dolman v. Biſhop of Sarum.

* (G. b. 2) [Voidance. Diſpenſation.] Plurality.

* There is no Letter to this in Roll.

1. **If an Incumbent has a Diſpenſation for a Plurality from the Pope, and he** takes a ſecond Benefice **he may keep both, and neither ſhall be void,** * **becauſe it** is not a Voidance by Common Law, but by a Canon and Law of the Church; **and therefore the Church may diſpenſe with it.** 11 H. 4. 60. b.

Lord Ch. J. Vaughan * Fol. 359. takes Notice, that it paſſes in the New Books for Current, that in Caſe of Pluralities the Voidance is by the Canon Law, and therefore may be diſpenſed with by the ſame Law; but that in Caſe of a Biſhop made, the Voidance is by the Common Law; but he ſays, that if the Canon Law be made Part of the Law of this Land, then it is as much a Law of the Land, and as well and by the ſame Authority as any other Part of the Law of the Land; and if it be not made the Law of the Land, then hath it no more Effect than a Law of Utopia; therefore the Canon Law here is the Law of the Land. Vaugh. 21. in Caſe of Edes v. Walter Biſhop of Oxford.

2. **If a** Parſon **has a Diſpenſation** to retain **the Benefice,** if he enters into Religion, **the Church ſhall not void if the Entry into Religion be afterwards. Dubitatur.** 11 H. 4. 60. b. 77. b.

3. **A** Monk **or ſuch Religious cannot** have Benefice **by Licence,** unleſs he has a Bull of Exemption. 11 H. 4. 78. **Quære.**

Br. Premunire, pl. 14. cites 11 H. 4. 37. where it was ſaid by ſome that it had been us'd to make Diſpenſations, and to grant to one who entered into Religion to retain his firſt Benefices.

4. **If an** Incumbent **has Diſpenſation** to retain the Benefice, tho' he be deprived; **this ſhall not ſave the Avoidance, if he be deprived after; (for it ſeems it is repugnant.) Contra** 11 H. 4. 60. b.

5. **If a** Baſtard **be a Parſon, if the** Pope makes him able before Privation, **he ſhall retain the Benefice.** 11 H. 4. 78. **Granted. (It ſeems he ſhall not be deprived in this Caſe.**

So if ſuch a Perſon obtains a Diſpenſation from the King or Archbiſhop before he be deprived, he ſhall retain the Benefice. Watſ. Comp. Inc. 8vo. 257. cap. 14. cites 11 H. 4. 38. 76. 77. &c.

(H. b) In what Caſes the Diſpenſation *of the King* ſhall prevent a Voidance.

1. **If the King gives Licence to an Incumbent** to be Incumbent and Biſhop, **if he be made Biſhop after, the Benefice ſhall not void.** 11 H. 4. 60. H. 39 El. B. R. **between** * *Armiger and Holland.* **Per Curiam reſolved.**

* Mo. 542. pl. 719 S. C. and P. reſolved. —— Cro. E 542. Hill. 39 Eliz. S. C. adjournatur. —— Cro. E. 601. S. C. and P. reſolved. —— 4 Rep. 75. a. S. C. by Name of Holland's Caſe.

2. Henry de Blois **the Brother of King Stephen, was** Biſhop **of Wincheſter** and Abbot **of Glaſſenbury. Liber Succeſſionis** 19.

11 H. 4. 38. Hankford referr'd to this Caſe, and ſaid that the ſame Perſon had the Poſſeſſions and the Dignities of them at the ſame Time. —— In the Time of H. 6 *Henry Beaufort* the King's Great Uncle, being made Cardinal, had the Po e's Diſpen-

Disposition to retain the Bishoprick of Winchester; and tho' it was held then, that this Dispensation came too late, yet afterwards in the Time of H. 8. *Cardinal Woolsey* having, before he was created Cardinal, obtained the Pope's Bull to retain the *Archbishoprick of York* as Perpetual Administrator, *and the Abbey of St. Alban's in Perpetual Commendam*, he held both during his Life by Virtue of this Dispensation. Dav. Rep. 80. a. cites 27 H. 8. 15. b.

(I. b) In what Cases the Dispensation of the Pope subsequent shall toll the Benefit of a Voidance. [*Voidance by the Canon* or by Statute, when and in what Cases. And Pleadings.]

Jo. 404. S.C. See pl. 3. in the Notes there.

1. If an Incumbent be created Bishop, the Dispensation of the Pope after to retain the Benefice also shall not oust the Patron of the Presentment. 11 H. 4. 38. b. 59. b. 78. b. clearly agreed.

*If before the Statute of 21 H. 8. a Man had taken two Benefices, it *had not been good without* a Perinde Valere *in the Spiritual Law*, and the Meaning of the Law was to help one that was a Chaplain to Noblemen, and not such as are *Hunting Chaplains* that hunt *after Benefices*.

2. If an Incumbent of a Church, with Cure under 8 l. per Annum, takes a second Benefice with Cure, in which he is also Instituted and Inducted, by which the first is void against the Patron, so that he may present, but before Presentation the Archbishop by Force of the Statute of 25 H. 8. gives to him a License *perinde Valere) to hold the 1st with the 2d Benefice, tho' he was Instituted and Inducted before into both; this is not a good Licence, tho' confirmed according to the Statute to take away the Presentment of the Patron, tho' it is a Voidance by Force of the Canon, and not by Force of the Statute of 21 H. 8. For by the Canon the first Benefice was so void, that the Patron might have presented before any Deprivation; and therefore after such Time as the Patron had Power to present, this Power cannot be taken away by a Licence. Trin. 14 Car. B. R. between *Baldock* and the *King*, in Writ of Error upon a Judgment in Bank in Quare Impedit, where it was so adjudged upon a Demurrer; and now per Curiam of B. R. accordingly resolved, but Day given over to Michaelmas Term. But afterwards in the same Trinity Term adjudged accordingly per Curiam. Intratur, 13 Car. Rot. 1259.

Per Popham. Goldsb. 164. Hill. 43 Eliz. in the Case of Robins v. Prince.

See S. C. argued Mo. 434 to 448. by Name of Robins v. Gerrard and Prince. And Ibid. 448. The Justices doubted if the Qualification and Dispensation which came after the Institution, and before the Induction to the second Benefice, be sufficient by the Proviso of the Statute of 21 H. 8. to retain both Benefices; and Popham and Gawdy thought that it was not sufficient, because the Induction shall have Relation to the Institution, and the Benefice is taken by the Institution; and the Intent of the Statute was not, that the Qualification should serve them who might obtain two Benefices, but that first they should be Chaplains retained, and Qualified or Graduates, and then to acquire the Benefices; and if it shall be allowed that the first Benefice shall not be void till Induction, one might by Covin obtain 20 Benefices, and not be Inducted to any, and would never take Dispensation till he had first the Benefice; but Fenner and Clench e contra, that the Qualification and Dispensation is Time enough before Induction: And after at a Convocation of all the Justices of England, Hill. 41 Eliz. they agreed with Popham and Gawdy, by which Clench and Fenner Mutatis Opinionibus assented to the Judgment for the Plaintiff.——Goldsb. 162. pl. 97. S. C.——Jenk. 273. pl. 42. S. C.

* Fol. 360.

3. If an Incumbent of a Church with Cure, above 8 l. Value, afterwards is Presented and Instituted into a 2d Benefice with Cure, but before Induction into it, he is made a Chaplain within 21 H. 8. and after obtains a Dispensation according to the 21 H. 8. to hold both; this Dispensation is not good, because tho' the 2d Church was not void within 21 H. 8. before * Induction, yet it was void by the Institution by the Canon; so that the Patron might have presented, the which cannot be taken away by a Retainer and Qualification after. Co. 4. *Digby* 79. Resolved.

4. King H. 4. Presented *one* that was *incapable* of his Presentation, and the Presentee *was* thereby Admitted, Instituted and *Inducted*, and afterward

ward the Pope enabled the Preſentee by his Bull, yet the King had a Scire facias, and thereby recovered his Preſentation again, becauſe the Incumbent was not capable when he was preſented. Dod. of Adv. 74. Lect. 14.

5. 21 *H.* 8. 13. *S.* 9. Enacts that *if any Perſon having a Benefice with Cure of Souls, being of the yearly Value of* 8 l. *or above, accept another with Cure of Souls, and be Inſtituted and Inducted in Poſſeſſion of the ſame, immediately upon ſuch Poſſeſſion thereof the firſt Benefice ſhall be adjudged * void.* 21 *H.* 8. 13. *is a General Law*, and therefore need not to be pleaded, or any Part thereof. Cro. E. 601. Armiger v. Holland.——Mo. 542. S. C. and P.——8 l. Value of a Church *ſhall be accounted as* 'tis valued in the Valuation of the Benefices, and not according to the true Value, as it is upon Improvement, tho' Opinions have differed before; for the Statute intends as it was valued in the ancient Book of Firſt Fruits and Tenths, which was taxed 29 E. 1. And after when another Valuation was made 26 H. 8 then according to that Valuation. Cro. C. 456. cites it as adjudg'd 8 Car. in C. B. in Caſe of Drake v. Hill.

Averring in general, that 'tis of 8 l. Value, is ſufficient, without ſaying it is of ſuch Value in the Queen's Books, and it ſhall be taken to be according to the true Value thereof. Cro. E. 853. Bond v. Tricket.—It ſhall be accounted according to the very Value of the Church. Noy 38. Bene v. Tricket.—Same Caſes cited Watſ. Comp. Inc. 8vo. 6. cap. 2.——In all Precedents of Pleadings founded upon the Statute of 21 H. 8. it is expreſsly alleg'd that the 1ſt Benefice at the Time of accepting the 2d, was of the annual Value of 8 l. and ſo are the Precedents in Co. Ent. 369. c. 512. a. Winch 670 and 857. And it ſeems alſo that where a *Verdict found that the 2d Benefice is now of the clear yearly Value of* 50 *l.* it is utterly Immaterial; For in a Trial at Bar of B. R. Hill. 2 W. & M. in Ejectment by **Jones** Leſſee of **Dr. Lakard** Dean of Windſor v. **Dr. Sambre** Dean of Guernſey, for the Rectory of H. in the County of Oxford, it was agreed by all the Juſtices that the Value ſhall be according to the Valuation in the King's Books; and the ſame Reſolution was per tot. Cur. in the Exchequer, 6 Nov. 1692. in a Cauſe between **Stamp and Aylifft**, by Bill. 2 Lutw. 1305. in the Caſe of **Sharpe v. French**, the Reporter ſays he had this by good Information; and adds, That if the Value ſhall be taken as it was ſo many Years before the Verdict, to what Purpoſe can it be to find by the Verdict, that then it was of the real annual Value of 50 l. For if the Value thereof ſhall be taken, as it was in the laſt Book of the firſt Fruits, this was 26 H. 8.

In Quare Impedit the Plaintiff ſet forth, That he was ſeiſed in Fee of the Advowſon, and preſented A. who took another Benefice, and ſo the Church became void Per acceptationem alterius Beneficii; and the Defendant demurr'd, becauſe he doth not ſhew the Value of the 2d Benefice, nor that there was Cure of Souls belonging to it; And reſolved per Curiam, That he need not, the Plaintiff himſelf being rightful Patron; but otherwiſe it is the Plaintiff did go to intitle himſelf by a Lapſe, there he ought to ſhew theſe Particulars, that it might appear to be a Ceſſion within the Statute that the Patron ought to take Notice of; but to the Patron it is ſufficient that the Benefice be void; and altho' the ſecond Benefice be but of the Value of 20 s. per Ann. yet the Patron may take Notice of it, if he will; but he is bound to take Notice of it according to **Lolland's Caſe** 1 Co. And if Iſſue be taken on Vacavit per Ceſſionem, yet if it be found Quod vacavit per Mortem, it is for the Plaintiff if he be Patron, according to 1 Inſt. 282. And ſo the Demurrer was over-ruled. Freem. Rep. 241. 242. pl. 253. Hil. 16--. Pridgeon's Caſe.

If there are *two Parſons of one Church*, and each of them has the entire Cure of the Pariſh, and both the Benefices of the Value of 8 l. per Ann. *one dies, and the other is preſented*, this is a Plurality within the 21 H. 1. 13. and is within the Intent of the Statute, that none ſhall have 2 Livings or Benefices with Cure. Cro. E. 351. Anon.——Hob. 158. S. P. but ſays that if the Churches had been united before, and then a Parſon had been preſented &c. to the United Churches, it had been otherwiſe.

S. 10. *It ſhall be lawful for the Patron thereof to preſent another, as if the Incumbent had died or reſigned, any Licence, Union, or other Diſpenſation to the contrary notwithſtanding.* Let the *Value* of the Church *be what it will*, the Patron, if he pleaſes, may preſent upon the taking of the 2d Benefice. Per Vaughan Ch. J in delivering the Opinion of the Court. Freem. Rep. 51. pl. 64. in Caſe of Shute v. Higden.

Since the Statute of 21 H. 8. there have been diverſe *General Pardons*, and no Pluralities were ever conceived to be within them. Cro. C. 358. in Caſe of the King v. Pryſt.

S. 11. *Every Licence, Union, or other Diſpenſation obtained contrary to this Act ſhall be void.*

S. 12. *If any Perſon obtain (from Rome or elſewhere) any Licence, Union, Toleration or Diſpenſation, to receive any Benefice with Cure, he ſhall forfeit* 20 *l. to be divided betwixt the King and the Proſecutor.* The *Pope* **cannot grant* to a Man *to have three Biſhopricks.* Br. Parliament, pl. 13. cites 11 H. 4. 6. 7. Per Horton, to which Hankford agreed.---[* All the Editions of Br. have the Word (Not) but the Year-Book is in the Affirmative, if with the Conſent of the Patrons.]—And in the Caſe of Edes v. Walter Biſhop of Oxford. Vaugh. 23. Vaughan Ch. J. cites S. C. accordingly, and that if it were without the Conſent of the Patrons, it was not diſpenſing to hold, but was a Granting away the Property of the Patrons, which a Diſpenſation could not.——Gulielmus *Cotton* D. D. Archidiaconus Lewenſis

Lewenſis [in Suſſex] & Eccleſiæ Paulinæ Canonicus Reſidentiarius conſecratus eſt in Epiſcopum Eccleſiæ Exonienſis una cum Sarisburienſi & Bangorienſi Novembris 12. 1598. Godwin de Præſulibus 478. S. 38.

A. had a Diſpenſation from the Archbiſhop of Canterbury to hold a *Trialty*, and the *Queen confirm'd the Diſpenſation*, with a *Non Obſtante* aliquo Statuto. A had one Benefice before of the Gift of the Queen, and now took two more; but adjudged that the firſt was void by the 21 *H.* 8. D. 351. b. pl. 25. Cox's Caſe.——If a Man takes a Trialty which is not allowed him, he cannot by that take two Benefices, becauſe his Diſpenſation is void. Per Hobart Ch. J. Hob. 158. in Caſe of Colt and Glover v. Biſhop of Coventry.

If a Parſon has a Benefice above 8 l. per Ann. and then he *takes a 2d Benefice with a Diſpenſation*, and then takes *a 3d*, his *firſt Benefice is only void*. Adjudged per Curiam. Godb. 153. pl. 201. Mich. 5 Jac. C. B. Anon.——Reſolved that the firſt is void by the Statute of 21 H. 8. cap. 13. 4 Le. 237. pl. 378. Anon. ſeems to be S. C.——S. P. And the Queſtion was, Whether both the firſt Benefices or the firſt only ſhould be void? And Heron ſaid it was adjudged that both of them ſhould be void. Noy 149. The King v. the Biſhop of Chicheſter.

If a Man has a Benefice with Cure worth above 8 l. he cannot without Qualification and Diſpenſation *procure another with Cure to be united to it after*, though they make but one Benefice; for this Cautel of Union is provided for by expreſs Name. But of Unions before I am of another Mind, and Tolerations are alſo excluded, which is a proper Word for this Caſe of Commendam temporary; for it is not allowed but tolerated, Non Præcepto ſed Permiſſione, as the Canon ſpeaks. Per Hobart Ch. J. Hob. 158 in Caſe of Colt and Glover v. Biſhop of Coventry and Litchfield. ——Watſ Comp. Inc. 8vo. 328. cap. 16 cites S. C. But Dr. Watſon ſays he rather thinks that the Statute is not prohibitory of Perpetual Unions, but hath Reſpect to Temporary Unions only, as for the Life of one Incumbent which the Archbiſhop may make, and ſometimes hath made.

*The King's Chaplain Extraordinary is not capable of a Plurality within this Statute.

S. 13. *Provided that every Spiritual Perſon of the King's Council may purchaſe Licence or Diſpenſation to keep* 3 *Benefices with Cure, and the* * *Chaplains of the King, Queen, King's Children, Brethren, Siſters, Uncles or Aunts, may ſo keep each of them* 2 *Benefices with Cure.*

1 Salk. 161. Adjudged Mich. 12 M. 3. in B. R. and affirm'd in Cam. Scacc by a Majority of one. Brown v. Mugg.

S. 20. *The Brethren and Sons of Temporal Lords (born in Wedlock) may purchaſe ſuch Licence or Diſpenſation, to keep as many Benefices with Cure, as the Chaplains of a Duke or Archbiſhop.*

S. 21. *The Brethren or Sons (born in Wedlock) of every Knight may keep two with Cure.*

A Retainer within this Statute muſt be *ſigned and ſealed* with the Hand and Seal of the Qualifier.

S. 22. *Provided that the Chaplain, ſo keeping Benefices with Cure, ſhall (where Need ſhall be) have Letters under the Sign or Seal of the King, or other their Lord and Maſter, teſtifying whoſe Chaplains they be, or elſe not to enjoy ſuch Plurality of Benefices.*

Jenk. 273. pl. 91.—And ſo are the Words of the Statute, and ſo Sealing only is not ſufficient. Godb. 41. Queen v. Savacre.——By the Retainer of the Number allowed by the Statute, the Statute is executed, and the Perſon ſo qualified to retain has no further Power to qualify another, by doing it under Seal; for the Act is *Provided always, that they ſhall have &c.* Savil. 100. The Queen v. Biſhop of Lincoln and Skilling.——*Having ſeen* the *Retainer* under the Hand and Seal of the Peer that gives the Qualification, is good *Evidence* of the Retainer. Litt. R. 1. The King v. Frankwell.

On a Queſtion whether a Leaſe, granted to W. the Plaintiff, by a Parſon of a firſt Living with Cure, and above 8 l. a Year, was good, he having accepted a 2d Living with Cure and of 8 l. before the Leaſe was confirmed by the Biſhop, and he being Chaplain to Queen Eliz. but no Teſtimonial being produc'd (the Parſon having been dead 30 Years, and the Leaſe continuing, as being made for 81 Years) it came in Debate whether a *Retainer by Parol only* by the Queen, was not ſufficient. Coke Attorney General inſiſted that Chaplain may be retained by Parol without Teſtimonial, and that Qualification *comes timely enough, if made before he is Impleaded*; ſo that he has it in Pugno to ſhew to the Court, tho' he had it not at the Time of taking the ſecond Benefice. And adjudged accordingly for the Reaſons aforeſaid. Sav. 135. pl. 213. Whetſtone v. Hickford.——Cro. E. 424. 425. Mich. 37 & 38 Eliz. B. R. S C. Popham held that the Queen could not retain by Parol only; but Fenner e contra. It was ſhewn that Y during his Life was reputed her Chaplain, and performed the Office of Chaplain as well in her private Cloſet as elſewhere, and had all the Benefits as her Chaplain &c. Wherefore the Court ſaid that it ſhould be intended that he was her Chaplain, and well and duly retained; and therefore it was held that he was a Perſon able to make ſuch Leaſe; and the Jury found for the Plaintiff——1 Salk. 162. in a Note, in the Caſe of Brown v. Mugg. cites S. C.

S. 23. *Doctors and Bachelors of Divinity, Doctors of Law, and Bachelors of Law Canon, admitted to the ſaid Degrees by either of the Univerſities of this Realm, and not by Grace only, may purchaſe ſuch Licence to keep two Benefices with Cure.*

S. 29. It ſhall be lawful to Spiritual Perſons, being Chaplains to the King, to accept (of the King's Gift) any Benefices, to what Number ſoever, without the incurring the Penalty of this Act.

If one being the *King's Chaplain takes a Biſhoprick*, he ceaſes to be the King's Chaplain, and Biſhops are not in that Reſpect Chaplains to the King, within the Meaning of this Law; So that the Clauſe of the Statute which gives the King Power to give as many Benefices as he will of his own Gift to his Chaplain, will not ſerve them. Per Hobart Ch. J. Hob. 157. in Caſe of Colt and Glover v. Biſhop of Coventry.——The *King by a Special Proviſo in the Statute* 21 *H.* 8. *may give to any of his Chaplains as many Benefices as he pleaſe.* But otherwiſe it is of a Common Perſon; for they are ſtinted by the Statute. Adjudged 4 Le. 247. pl. 402. Trin. 11 Jac. C. B. Biſhop of Exeter v. Wallop.

S. 14. Every Archbiſhop and Duke may have each of them 6 Chaplains.

The Archbiſhop's Chaplain having one Benefice of the Gift of the Queen, procured a Diſpenſation to Have and Enjoy 3 *Benefices incompatible*, which the Queen confirmed under the Great Seal, Ita quod &c. Abſque impedimento alicujus Statuti, aut aliqua alia re quacunque Non Obſtante, by Virtue whereof he obtained two others incompatible. And it was a Queſtion whether the firſt was void by the Statute 21 H. 8. or not. And the next Term Judgment was given for the Queen without Argument. D. 351. b. pl. 25. Trin. 18 Eliz. Coxe's Caſe —— The Reporter adds a Nota, that ſo much of the Act of 21 H. 8. as concerns the procuring Diſpenſations from Rome for Pluralities or Non-Reſidents, and all Words and Sentences concerning it, and alſo the intire Act of the 25th for granting Diſpenſations at Canterbury, are repealed by the Act of 1 & 2 P. & M. cap. 8. And by the Act of Eliz. 1. the entire Act of the 1 & 2 P. & M. is repeal'd, and alſo this Part of the 21 H. 8. and no Words of Reviving thereof; for this had been meerly contrary to the Intent of the Act; but in the Act of the 25th which is Revived, there is a Proviſo and Reſtraint to Canterbury, for Diſpenſations derogatory or contrary to the Act of 21. which affixes the 21 to be in Eſſe and Force. D. 352. pl. 25. at the End.

S. 15. Every Marquis and Earl may have 5 Chaplains.
S. 16. Every Viſcount and Biſhop may have 4.

An *Infant Lord* of 10 Years of Age, *retained* a Chaplain, and held good within the Statute. 4 Rep. 119. cited in Acton's Caſe, as of the Queen v. the Biſhop of Salisbury. Paſch. 44 Eliz. upon a Retainer by the Earl of Southampton. ——Watſ Comp. Inc. 8vo. 29 cap. 3. cites S. C.

If the *Son and Heir Apparent of a Lord* retains a Chaplain, his Father dies; this Retainer is not ſufficient, but there muſt be a *New Retainer*. Jenk. 272. pl. 91.—Watſ. Comp. Inc. 8vo. 33. cap. 3. cites S. C.

S. 17. The Chancellor, and every Baron and Knight of the Garter, may have 3.

S. 18. Every Dutcheſs, Marchioneſs, Counteſs and Baroneſs, † being Widows, may have 2.

† By theſe Words it ſuffices, that ſhe be a Widow at the Time of the Retainer. 4 Rep. 118. b. Hill. 45 Eliz. C. B. in Acton's Caſe.

S. 19. The Treaſurer and Comptroller of the King's Houſe, the King's Secretary and Dean of his Chapel, the King's Almoner and Maſter of the Rolls, may each of them have 2, and the Chief Juſtice of the King's Bench, and Warden of the Cinque Ports, each of them one; and each of the aforeſaid Chaplains may purchaſe Licence or Diſpenſation to keep two Benefices, with Cure.

The Chaplain of a Lord having two Benefices with Cure, without a ſpecial Licence or Diſpenſation of the Metropolitan, ſeems not to be in Danger of loſing his Plurality by Force of the Act of 21 H. 8. becauſe the Words are not that he muſt ſue for a Licence &c. but that he may ſue for ſuch Licence &c. but he is thereby in Danger by the Spiritual Law. Quære bene inde. D. 312. b. pl. 88. Anon.

S. 24. Provided that every Archbiſhop, becauſe he muſt uſe at Conſecration of Biſhops, 8 Chaplains; and every Biſhop, becauſe he muſt uſe at the giving of Orders and Conſecration of Churches 6 Chaplains, may have two Chaplains over and above the Number limited, whereof every one may purchaſe Diſpenſation, and take as many Benefices with Cure as is before aſſign'd.

S. 25. No Perſon, to whom any Number of Chaplains by the Proviſions aforeſaid is limited, ſhall advance any Spiritual Perſon, above the Number appointed, to receive more Benefices with Cure than is above limited; and if they do, every ſuch Perſon ſo advanced above the ſaid Number ſhall incur the Penalty in this Act.

After Marriage with a Peer, ſhe can't retain, tho' after Marriage with a Gentleman ſhe may.

S. 33. *Provided that every Dutcheſs, Marchioneſs, Counteſs and Baroneſs (Widows) who ſhall tvke Husbands under the Degree of a Baron, may take ſuch Number of Chaplains as if they had remained Widows, and theſe may take ſuch Number of Benefices.* Jenk. 273. pl. 91.——Watſ. Comp. Inc. 8vo. 34. cap. 3. cites S. C.——

6. 25 *H.* 8. 16. *S.* 2. Enacts that *every Judge of the King's Bench and Common Pleas, the Chancellor and Chief Baron of the Exchequer, the King's Attorney and Sollicitor-General may each of them retain one Chaplain, having one Benefice with Cure of Souls.*

Goldsb. 162. S. C.— This Enrolment was agreed by the Juſtices not to be good either for the Manner or the Matter, but ſhould be in a Roll; but the Neglect of that is only the Contempt of the Clerk, and not conditional to the Diſpenſation. Mo 447. ut ante.——S. C. cited Vent. 313. in Caſe of the Ironmonger's Company v. Nailer, that where the *21 H. 8. appoints the Inrolment of Diſpenſations in Chancery, yet the not doing it does not invalidate the Diſpenſation.—Popham held the Inrolment good, and that it was an Offence in the Clerk only, and finable, but no Offence in the Party; for he may not procure the Clerk to make his Entry in another Courſe than the Cuſtom is, and conſequently no Fault in him. Goldsb. 164. 165. in S. C. of Robins v. Prince.——*[The Act appointing the Inrolment is not the 21 H. 8. but the 25 H. 8. cap. 21.].

7. Diſpenſations are *inroll'd in Chancery* in a Paper-Book kept there by Way of Memorandum; as for Inſtance, *25th Auguſt, Anno* 29 *Reginæ* 1587. *Diſpenſatum fuit cum Roberto Merick Artium Magiſtro Capellano Dominæ Borough, ut ipſe una cum Rectoria Eccleſiæ Parochialis de Hurton Eccleſiam de Staines recipere & quoad vixerit retinere poſſit.* Mo. 434. in Caſe of Robins v. Gerrard and Prince.

8. P. *Rector* of C. was *elected Biſhop* of Oxford. *Before his Conſecration* the *Archbiſhop gave him a Diſpenſation* purſuant to the Statute of H. 8. *to retain* his ſaid Rectory with the Biſhoprick, which the *King confirmed* by Letters Patents under the Great Seal, and that the Biſhop might enjoy &c. ſo long as he continu'd Biſhop of Oxford, *with a Non Obſtante* aliquo Statuto, or other Matter. P. died; W. was elected Biſhop of Oxford, and got Letters of Diſpenſation &c. to hold the ſaid Rectory in Commendam &c. The Patron of C. brought a Quare Impedit. Judgment was given by the Opinion of the whole Court, That the Avoidance was by Death, and not by Ceſſion. Vaugh. 18 to 27. Paſch. 19 Car. 2. Edes v. Walter Biſhop of Oxford.

See (I. b) pl. 5. in the Notes.

(I. b. 2) *What ſhall be* ſaid to be *Pluralities.*

* S. having one Benefice was preſented to a 2d, and then purchas'd a Diſpenſation, (which was too late) and then was qualified, and afterwards accepted the Archdeaconry of Glouceſter. Wray ſaid, That a Doctor of the Civil Law affirm'd to him, that their Law is, That if One having a Benefice with Cure of Souls accepts an Archdeaconry, the *Archdeaconry* is void; But Wray ſaid, That he conceiv'd that upon the Statute of 21 H. 8. the Law is qualified by this Proviſo. Le. 316. pl. 442. Paſch. 31 Eliz. B R. Underhill v. Savage. — S. C. ſhortly ſtated. 4 Le. 88. pl. 185. by Name of Savage's Caſe. —— † *Taking a Prebend* does not make a Church void. Mo. 261. pl. 411.

1. IN the Statute of 21 *H.* 8. 13. is a *Proviſo, That no Deanry, *Archdeaconry, Chancellorſhip, Chanterſhip, or* † *Prebend, nor Parſonage that hath a* ‡ *Vicar endow'd, nor any Benefice perpetually appropriate, be taken to be a Benefice with Cure of Souls in any of the Articles of this Act.*

‡ It was ſaid, that the 21ſt of H.8. againſt Pluralities does *not extend to Rectories where there are Vicarages endow'd*, and Lindwood deſcribes a Benefice without Cure, viz. Cujus Cura Vicarlis perpetuo exercenda eſt; Otherwiſe, where the Vicar is Temporal and Removable. Arg. Vent. 15. Paſch. 21 Car. 2 B. R. in the Caſe of Heath v. Pryn. —— A Man was *preſented to a Church with a Vicarage* endow'd, the Parſon *accepted of* a Preſentation to *the Vicarage without Diſpenſation*; whether this were a Plurality by the Law, and by the Statute of 21 H. 8. was the Queſtion. Hobart Ch. J. was of Opinion, that notwithſtanding they were ſeveral Advowſons, and ſeveral Quare Impedits might be brought of them, and ſeveral Actions maintain'd for their ſeveral Poſſeſſions, yet the Preſentment of one Man to the Parſonage and Vicarage was no Plurality, becauſe the Parſonage and Vicarage *are but one Cure*; And there is a Proviſo

viſo in the Statute, That no Parſonage, that hath a Vicar endow'd, ſhall be taken by the Name of a Benefice with Cure within the Statute, as to make it a Plurality. Godolph. Rep. 296. cap. 26. S. 5. cites Mich. 22 Jac. B.R. Woodley and the Biſhop of Exeter, and Manwaring's Caſe. Cro. par. 2. ——— [But I do not obſerve this Point there.]

2. In Quare Impedit, it appear'd, That the *Incumbent of a Church in England* was *made a Biſhop of Ireland*; and *afterwards the King granted* to the ſaid Biſhop *to have and retain* the ſaid Church *for 6 Years in Commendam.* It was held, that the Commendator, notwithſtanding this Grant for 6 Years, hath yet Power to retain during his Life, and cannot be abridg'd by the Limitation for 6 Years; and it is like a Confirmation or Attornment, or Aſſent to a Legacy, and cannot abridge the Eſtate which is confirm'd, but that it ſhall enure according to the Eſtate which is limited. Per Hutton & Winch Juſtices. Cro. J. 692. Mich. 22 Jac. C. B. in the Caſe of Woodley v. Manwaring &c.

(I. b. 3) *Voidance. At what Time* by Pluralities.

1. IT was held Per Cur. That if any *Parſon* who was *ouſted* of his Parſonage *in the late Wars*, by that which they then call'd Sequeſtration, for not conforming to the Presbytery &c. had *accepted another Benefice by Preſentation*, and Confirmation *by the Commiſſioners* or Triors, (there being then no Biſhops) this was *not any Avoidance of the 1ſt* Living *unleſs he continued in* ſuch *Second* Living the 25th of December, Anno 1659 (which is the Time mention'd in the new Statute) *and ſhew'd his Liking* thereto. Sid. 163. Mich. 15 Car. 2. B.R. Brown v. Spence.

2. It has been reſolv'd in **Holland's** Caſe, and likewiſe in **Digby's** Caſe, in the 4 Rep. and often before ſince the Council of Lateran, Anno Domini 1215. That if a Man has a Benefice with Cure, *whatever the Value be*, and is admitted and inſtituted into another Benefice with Cure, of what Value ſoever, having *no Qualification* or Diſpenſation, the *firſt is ipſo facto void, ſo as* the Patron may preſent another to it if he will; but if the *Patron* will not preſent, then if *under the Value, no Lapſe* ſhall incur *'till* Deprivation of the firſt Benefice, * and *Notice*; But if of the Value of 8l. or above, the Patron at his Peril muſt preſent within 6 Months by 21 H. 8. 13. Vaugh. 131. Hill. 22 & 23 Car. 2. C. B. Shute v. Higden.

S. P. Lane 20. in the Caſe of Dennis v. Drake. — cites 4 Rep. 79. b. in Digby's Caſe.— But in Mo. 12. It ſeems to be allow'd that Admiſſion and Inſtitution do not make the firſt *Cure void* without Induction. Trin. 1 & 2 Ph. & M. Agar v. Biſhop of Peterburgh and Dean.— By the taking the ſecond Benefice, and by the Induction thereto the firſt is clearly void. Cro. E. 601. Mich. 39 & 40 Eliz. B.R. Armiger v. Holland. —— The Incumbent after taking the ſaid Benefice may officiate the Cure 'till the King himſelf takes Care to do it or 'till another ſhall be admitted and inſtituted to it, and ſhall be ſubject to Payment of Tenths, and ſubject to Diſtreſs for Rent-Charge and other Charge which lies upon the Rectory, becauſe he takes the Profits as one that enters without Admiſſion and Inſtitution ſhall be; but neither the one nor the other can bring Action of Juris utrum, or Writ of Annuity, nor ſue for either, nor plead as Incumbent in Poſſeſſion in Quare Impedit, without a Qualification and Diſpenſation. Jo. 339. Hill. 9 Car. the King v. Prieſt. ——— * Godb. 25. pl. 33.

3. Where a Parſon is preſented to a 2d Benefice there is a *Difference between Non-ſubſcribing and Not reading after Subſcription*, as to the making the firſt Church void; for the Statute 13 *Eliz.* prohibits Admiſſion before Subſcription, and makes the Admiſſion, Inſtitution, and Induction void; and in ſuch Caſe the Party never was lawful Parſon, and ſo the firſt Church not void; but otherwiſe, where he ſubſcribes and does not afterwards read them within the two Months; for in ſuch Caſe, the firſt is void and the ſecond alſo. Per Vaughan Ch. J. and that the *Value* is not material. And Judgment accordingly. 2 Jo. 18. Shute v. Higden.

S. C Vaugh. 129 Hill. 22 & 23 Car. 2. C. B. Adjudg'd.—S.C. & P. Per Vaughan Ch. J. And he ſeem'd to incline that the Not Reading the Articles ſhould not make the Benefice void ab Initio; but the Statute is, That Admiſſions, Inſtitutions, and Inductions made contrary to the Act ſhould be void ab Initio; Now he that does not ſubſcribe is not

not inſtituted &c. according to the Act, and ſo it is void ab Initio. Judgment for the Plaintiff Per tot. Cur. Freem. Rep. 52. pl. 64 Mich. 1672.

(I. b. 4) *Diſpenſations.* Granted *by what Words, and neceſſary in what Caſes.*

Tho' he has not the Diſpenſation of the Archbiſhop, he ſeems not to be in Danger of loſing his Plurality by force of the Act of 21 *H.* 8. becauſe the Words are only, That *He may ſue for a Licence* &c. but he is in Danger by the *Spiritual Law.* Quære, bene inde. D 312. b. pl. 88.

1. CHAPLAIN *advanc'd* to two Benefices with Cure *ought to have the King's Diſpenſation for Non-Reſidency*, and ought to be *Reſident upon one of them.* Confirmation of the King, and Diſpenſation *of the Archbiſhop* are neceſſary regularly to maintain Pluralities. Jenk. 273. pl. 91. cites Rep. Drury's Caſe.

Watſ. Comp. Inc. 8vo. 38. cap. 3. cites S. C.

2. Quare Impedit by the Queen for having taken a 2d Benefice, and a Lapſe incurr'd; the *Defendant pleads a Diſpenſation from the Archbiſhop.* Upon Oyer of the Diſpenſation, *which recited the two Benefices to be of ſmall Value*, and then ſaid, *Unimus, incorporamus & anneximus* the one to the other *for the Life of the preſent Incumbent, without* the Word *(Diſpenſamus)* for the Taking thereof, It was objected, that this Clauſe could not enure as a Diſpenſation, becauſe there was no ſuch Intention, but to make an Union; and this cannot be an Union, becauſe there is not the Concurrence of the Patron and Ordinary, Sed non Allocatur; for Per Curiam, tho' there cannot be a Perpetual Union without the Concurrence of the Patron and Ordinary, becauſe 'tis a Loſs to them, yet there may be a *Temporary Union*, i. e. to the Perſon; as in this Caſe, for the Life of the Incumbent, and this (as was ſaid at the Bar, and not denied by the Court) *might be* done *by the Metropolitan alone*; for after the Death of the Incumbent the Union is diſſolved, and no Loſs accrues either to the Patron or Ordinary in the mean time, for one of them had his Preſentation and the other his Admiſſion; and this is a compleat Diſpenſation, and allow'd by the Statute 21 H. 8. (viz.) Any Licenſe, Uſe, Union, or Diſpenſation to the contrary, and no Neceſſity for the Word (Diſpenſation.) Cro. E. 719. Mich. 41 Eliz. C. B. the Queen v. Page and the Biſhop of London.

Jo. 394 S.C. where the Words are *Dummodo non ſit ultra* 10 Miles the one of the other; and that the Juſtices agreed, That it made no Condition to make the firſt void.— Watſ. Comp. Inc. 8vo. 39. cap. 3. cites S. C.

3. A Parſon who had one Benefice, and being Chaplain to an Earl got a Diſpenſation to hold another, *Modo ſit infra* 10 *Miles of the firſt*; and he accepted another, with Cure, and was inſtituted and inducted, but it was 17 Miles diſtant from the firſt; and the Patron not preſenting to the firſt Benefice within 6 Months, the Biſhop collated to the firſt, and his Collatee was inſtituted and inducted; and in Ejectment, the Queſtion was, Whether the Words *(Modo ſit)* made it a conditional Diſpenſation, and the firſt Benefice void, when he took the ſecond. Adjudg'd, that tho' theſe Words uſually made a Condition, yet by the Civil Law they were only a Caution or Admonition, unleſs other Words are added, viz. That if he do otherwiſe, then it ſhall be void; and therefore in this Caſe all the Court reſolv'd, that they ſhall not make a Condition, and the rather becauſe of the great Inconveniency which might follow, to make a great many Benefices void by Lapſe, which have been quietly enjoy'd under ſuch Diſpenſations. Cro. Car. 475. Trin. 13 Car. B. R. Dodſon v. Lynne.

4. The Defendant was Chaplain Extraordinary to the King, being Incumbent of Stockton, and afterwards inducted to the Rectory of Inkborough, being above the yearly Value of 8 l. by reaſon whereof Stockton was void, and ſo continued two Years; and then he was again preſented

ſented to it by the King, as upon his Title of Lapſe, and was inſtituted, and inducted again to Stockton, being likewiſe above 8 l. Value. Per Cur. 1*ſt*, A *Preſentation of the King of his own Chaplain* * *imports a Diſpenſation*, which the King himſelf hath Power to grant as Supreme Ordinary, and ſuch Preſentee ſhall hold a Plurality without any previous Diſpenſation; *But if* ſuch a Chaplain be *preſented to a ſecond Benefice by a Subject he muſt have a Diſpenſation* before he be inſtituted to it. 2dly, A Chaplain Extraordinary is not a Chaplain within the Benefit of the Act 21 H. 8. cap. 13 & 14. but only his Chaplains in Ordinary. Judgment for the Plaintiff, which was affirm'd in Cam. Scac. by a Majority of One. Nota, He has no Waiting Time, but his Name is only enter'd in the Book of the King's Chaplains; whereas a Chaplain within that Statute ought to be retained under Seal. 1 Salk. 161. Mich. 12 W. 3. B. R. Brown v. Mugg.

* S.P. D. 212. b. Marg. pl. 88. cites Trin. 11 Jac. C.B. Adjudg'd in the Caſe of Sir Henry Wallop v. the Biſhop of Exeter.

(I. b. 5) *Qualification.* What is *good*, or may become good *Ex poſt Facto.*

1. IN *Quare Impedit* by the Queen to preſent to the Church of M. which was void by the Incumbent's taking another Benefice, not being qualified; the *Defendant pleaded, That he was Chaplain to* Sir James Crofts, *Comptroller of the Houſhold*, and who by the Statute of 21 H. 8. might have two Chaplains, and might qualify them to take two Benefices, and that he had a Diſpenſation accordingly. The *Plaintiff replied, That* the ſaid Sir James Crofts *had two other Chaplains* advanced to two Benefices, and who are *ſtill alive*, and ſo the third could not be qualified &c. The *Defendant rejoin'd, That* one of thoſe two Chaplains *was diſcharged* by the ſaid Sir James Crofts, to be his Domeſtick Chaplain, ſo he hath now but two Chaplains, of which the Defendant is one; and upon Demurrer, it was adjudg'd, That *after a Perſon hath retained his full Number, and* they are *certified* Sub Signo & Sigillo to be his Chaplains, and thereby qualified to have two Benefices, tho' he afterwards remove them for any Diſpleaſure, or otherwiſe, out of his Service, yet during their Lives *he can qualify no other*, for they are ſtill his Chaplains at large, tho' not his Domeſtick Chaplains, and ſo are Chaplains within the Statute. Godb. 41. pl. 47. Trin. 28 Eliz. C. B. Rot. 1130. The Queen v. Savacre.

Owen 51. S. C. Adjudg'd. — Sav. 72. pl. 157. S. C. and that the Opinion of the Court was accordingly. — And. 200. pl. 236. S. C.

2. A *Lord retains* 6 *Chaplains at one and the ſame Time* by Letters Teſtimonial, where he is only intitled to retain three.—All ſix are preferr'd to ſix ſeveral Pluralities.—The three who are firſt promoted are warranted by the Statute, and yet the Reteiner was not according to the Statute, But *In Æquali Jure Melior eſt Conditio Poſſidentis.* 4 Rep. 90. Trin. 43 Eliz. in Drury's Caſe.— cites D. 132.

D. 312. b. pl. 88. S. P. Jenk. 272. pl. 91. ſays, That neither of them is qualified.

3. *Reteiner* of a Chaplain more than the Act allows is *not made good by the Death of the other Chaplains* afterwards, but he muſt have a *new Reteiner.* Per 3 J. v. Gawdy; and adjudg'd accordingly, and the Judgment affirm'd. Cro. E. 839. TTrin. 43 Eliz. Drury v. the Queen.

4 Rep. 90 S. C.—Jenk. 272 pl. 91. S.C.—D. 312. b. pl. 88.

4. If a Man be a *qualified Chaplain* to any Subject, and then be *made a Biſhop*, his Qualification is void, ſo as he cannot take two Benefices De Novo after by force of that Qualification. Per Hobart Ch. J. Hob. 157. in the Caſe of Colt and Glover v. the Biſhop of Coventry.

See (I. b) pl. 5. S. 29. in the Notes.

(I. b. 6) *Retainer. How.* And *Qualification* Annull'd or *Deſtroy'd* by what Act.

1. A LORD's Chaplain being ſufficiently qualified with his Maſter's Teſtimonial Sign'd and Seal'd, that he is his Chaplain, and having alſo a Special Diſpenſation for a Plurality, and being once advanced to the Plurality, ought to enjoy it during his Life, notwithſtanding his *Maſter's Death*, or *Departure from his Maſter's Service.* Per Catlin, Saunders and Dyer. D. 312. b. pl. 88. Trin. 14 Eliz. Anon.

But the Reporter adds a Quære, by Reaſon of the Caſe of Whetcomb [Whetſtone] v. Hickford

2. A Counteſs had 2 *Chaplains by Patent, and a 3d without. He without was firſt retained*, and took 2 Benefices by Diſpenſation, and adjudged lawful; for the Patent is not of Neceſſity, but only in Caſe where he has Cauſe to ſhew it. The Retainer is good without Patent. Mo. 277. pl. 432. Paſch. 31 Eliz. C. B. The Queen v. Biſhop of Lincoln and Skifling.

—Sav. 101. pl 181. S. C.—4 Rep. 89. b. S. C.—Jenk. 272. pl. 91.—Mo. 561. pl. 763. Mich. 41 & 42 Eliz. Adjudged by Anderſon, Glanvill and Kingſmill, that he who was firſt retained ſhould be preferr'd, and not he that firſt took a 2d Benefice, and got Diſpenſation; but Walmſley e contra. The Queen v. Drewry, as to the *firſt Retainer*—Cro. E. 724. 2 Juſtices, who before inclined otherwiſe, changed their Opinions; And ſo it was adjudged that the 3d Chaplain was not within the Benefit of the Statute 21 H. 8. 13. The Queen v. Drury.

4 Rep. 118. Acton's Caſe. S. C—Watſ. Comp. Inc. 8vo. 34. cap. 3. cites S. C. And ſo Dr. Watſon ſays he conceives, that

3. *Baroneſs Widow* retains 2 Chaplains, and they purchaſe a Diſpenſation, and the Baroneſs *marries* before the Chaplains accept a double Benefice; yet they may take two Benefices, becauſe the Marriage is no Diſcharge of the Service; but otherwiſe it is if *ſhe dies*, or if the *Baron diſcharge the Chaplains*, as he may, but if he does not diſcharge them, but dies; there needs no New Retainer. Mo. 678. pl. 924. Mich. 44 & 45 Eliz. C. B. The Queen v. Biſhop of Peterborough.

if any other Perſon capable of qualifying a Chaplain to hold a Plurality, diſcharges his Chaplain before he has taken the Benefit of his being qualified, he cannot afterwards lawfully hold two Benefices within the Statute 21 H. 8.

The Earl of Weſtmoreland retained a Chaplain, and after was attainted of

4. *Attainder of the Lord* &c. is Diſcharge of the Service and Power to qualify; and thoſe Chaplains retained and qualified before, who have not taken double Benefices, are *diſabled* by the Attainder. Mo. 678. pl. 924. Mich. 44 & 45 Eliz. in Caſe of the Queen v. Biſhop of Peterborough.

High Treaſon, and afterwards during his Life, the Chaplain having one Benefice of the Value of 8l. accepted a ſecond Benefice with Cure. And it was adjudged that the firſt Benefice was void; for tho' the Earl was alive, yet the Quality of his Perſon was altered; for by the Judgment he was become Ignoble. 4 Rep. 117. b. Hill. 45 Eliz. C. B. in Acton's Caſe.—Cites it as the Earl of Weſtmoreland's Caſe.

5. If an *Officer* allowed by the Statute to have one, two or three Chaplains, *retains* a Chaplain, and *after is removed* from his Office, in this Caſe the Retainer at the Common Law remains, but the Retainer upon the Statute is determined; for after the Remotion the Chaplain can't be Non-Reſident, or accept another Benefice. 4 Rep. 118. Acton's Caſe.

(K. b) Advowſon. *Avoidance. What* will be an Avoidance. *Acceptance of* a *Biſhoprick.*

The Church is void in fact immediately, and the Patron

1. IF an Incumbent be made Biſhop, the Church is void. D. 4. 5. Ma. 159. 34. Doctor and Student. 136. b. 7 H. 4. 25. b. 11 H. 4. 37. b. 24 E. 3. 26. b.

may

may preſent. Br. Quare Impedit, pl. 51. cites 11 H. 4. 37. 59. ——— All his Benefices void, and the King ſhall preſent, whoſoever be Patron. Br. Quare Impedit, pl 47.

2. If the Incumbent of a Provoſtry be elected Biſhop of the Biſhoprick which is Patron of the Provoſtry, and afterwards the King grants the Temporalties to him, yet the Provoſtry is void before Conſecration; For ye may refuſe before, and he is not Biſhop before Conſecration. 41. E. 3. 5. b. adjuoged. Watſ. Comp. Inc. 8vo. 385. cap. 20. cites S. C.

3. But after Conſecration the Provoſtry is void. 41. E. 3. 5. b. admitted.

4. So ſhall it be of a Prebend. 11. H. 4. 37. b.

5. If an Incumbent be created a Biſhop of the ſame Dioceſe where he was Incumbent, the Church is void thereby; For he cannot be Sovereign and Subject. Da. 1. Commendam. 69.

6. So if he be created Biſhop of another Dioceſe, the Church is void thereby, 11. H. 4. 37. b. 77. Becauſe he, who has taken upon him the Office of a Sovereign, ſhall not retain the Office of a Subject.

7. If an Incumbent be elected Biſhop, yet the Church is not void thereby before Conſecration. 11. H. 4. 37. b.

8. If an Incumbent in England be made a Biſhop in Ireland, yet the Church here is not void thereby. 24. E. 3. 2. b. If* Dean of York be made Biſhop of Limerick in Ireland, this makes a Voidance of the Deanry as well as if he had been made Biſhop of any Place in England. P. 3. Car. Regis, between *Evans and Aſcough*. Reſolved per Curiam upon a Special Verdict, and ordered per Curiam, That this ſhould not be ſpoke to any more but only to the Points in the Caſe.

*S P. So of a Parſon, agreed clearly; For the Conſtitution and Council that made it void is general, and not limited to any Place, and ſo it is reſolved 3 E. 3. Fitzh. Trial And ſo it was adjudged 21 Jac. C. B. in the Caſe of Woodley and the Biſhop of Exon and Manwaring. Jo. 158, 159. S C.--In this Caſe, the Dean, before Conſecration or Confirmation, obtained a Patent, with large Words of Non Obſtante recinere valeat in Commendam the ſaid Deanry &c. and afterwards he was choſen Biſhop of Briſtol, and then alſo before Inſtallation he obtained another Patent with a more ample Diſpenſation of retaining the ſaid Deanry in Commendam. It was agreed by all, That the Church or Deanry &c in England ſhall be void by Ceſſion, if the Parſon or Dean &c. be made a Biſhop in Ireland; For the Canon Law in that Point is one thro' all the World; Alſo Ireland is governed by the Laws of England, and is now as Part of England by Subordinary. The Judges argued two Days, and reſolved that all Commendams are Diſpenſations, and that Ceſſion commenced by the Canon and Council of Lateran; Secondly, that the King may diſpenſe with that Canon, 11 H. 7. 12. For the Pope might, and now by the Statute 21 H. 8. that Power is given to the King Cumulative, by way of Expoſition Veteris, and not by Introduction Novi Juris, and by that Statute a concurrent Power is given to the Archbiſhop of Canterbury, and may be granted by the King, or by the Archbiſhop &c. 3dly, That that Diſpenſation, after Election to the firſt Biſhoprick and before Conſecration &c. and alſo the Diſpenſation after Election to the ſecond Biſhoprick and before the Confirmation, is good enough in both Caſes, and he remains a Good Dean, to confirm &c. And afterwards the Judgment in the Caſe, being an Action of Treſpaſs, was given accordingly. Noy. 93, 94, 95. H. 22. Jac B. R. Evans and Kiſſin. v. Aſcuith——Latch. 233. S. C.—Palm. 458. S. C.

9. If an Incumbent had been created Biſhop, this had made a Voidance by the Common Law. 11 H. 4. 38. 60. 77. 29 E. 3. 44. it was ſaid that heretofore when the Conſtitutions were made, by which Plurality was ouſted, the which Conſtitutions commenced from Rome, yet from that Time it was Cauſe of Voidance in Banco Regis.

10. 26. E. 3. 55. b. it is ſaid, That the Pope J. made Conſtitution that a Parſon ſhall not have but One Benefice with Cure &c.

11. In a Quare Impedit, for hindring to preſent to the Pariſh Church of St. James, the Plaintiff declared, That St. Martin's being a large Pariſh by a Statute made 1 Jac. 2. the *Pariſh* of St. James's *was to be taken out* of it, *and made a Pariſh of itſelf with Cure, and Dr. Tenniſon, then Vicar of St. Martin's, firſt Rector, and* appointed *the Patronage after his Death to the Biſhop of London* and his Succeſſors, *and to the Lord Jermyn* and his Heirs *alternately*, that *Dr. Tenniſon was afterwards made Biſhop of Lincoln*, ſo that it belonged to the King to preſent by his Prerogative; To this Declaration the Biſhop of London demurred, and Dr. Birch pleaded the Statute *25* H. 8. And that by virtue thereof, the Archbiſhop of S. C Show. 413 to 425. & 441 to 505.

of Canterbury granted a Dispensation to Dr. Tennison, to hold this Church in *Commendam*, which the King confirmed *from the 22d of October till the first of July following* &c. To this Plea the Attorney-General demurred. The Court held, That the King's Turn is not served by * confirming this Commendam, because the Dispensation was only to save the Avoidance, and the Confirmation continued the Possession, but transferred no Right; It was objected, That † no Body can say the King shall present, when the Act of Parliament says otherwise, And that this was therefore a Case exempt from the Prerogative; but the Court held that this Act did not interfere with the Prerogative, because a *New Advowson must be subject to the Prerogative as an Old one is*; like an Estate-tail created by Act of Parliament, 'tis subject to such Bars as other Estates-tail, and the Wife shall be endowed of it. Then it was objected, That this New Church, as to Dr. Tennison, was a Kind of Donative, he coming in without Institution and Induction; And that by the very Words of the Statute, the presentable Right doth not commence till after him; And that in || Case of a *Donative*, the Promotion of the Incumbent makes no Cession. But Curia Contra; For in point of Estate the Right of Presentation commences by the passing of the Act Immediately, but in point of Interest, not till the Avoidance. 2 Salk. 540. Mich. 7 W. 3. B. R. The King v. Bishop of London and Dr. Birch.

* For that which he had before cannot be properly said to be Commended to him; 'Tis true, *if the Incumbent had died during the Continuance of such Title the King might have lost his Title to present.* Per Cur. 4 Mod. 212. S. C.— Show. 489. S. P. by Eyre J. and says this appears by **Parkhurst's Case** D. 228. b. & 233. a. & 2 Roll. 344.

† Holt Ch. J. seemed at the first to incline to this, but afterwards it was resolved, That this Act *only directed the Method, and Turns of presenting between the Patrons, and not to exclude the King of his Prerogative.* 3 Lev. 382. S. C. — And notwithstanding this Objection, the Right of Patronage even in this Case is vested immediately; It is like a Reversion for Life granted Cum acciderit per Mortem of the Tenant for Life, which vests an Interest immediately, though to commence in Possession in Futuro. Per Cur. 4 Mod 214 S. C.

|| The Court said, That this must be admitted to be Law; But if an *Incumbent of a Donative is made Rector by Act of Parliament*, as Dr. Tennison was in this Case, then the King has a Prerogative to present upon the Promotion of such Rector. 4 Mod. 213. per Cur. S. C.

(L. b) *Taking* of *second Benefice.*

See 2. Wils. 174.

By the Institution and Induction to the 2d Benefice, the first is void, tho' ‡ Fol. 361. the first be under 8 l. as well as if it was above that Value.

1. **If an Incumbent takes a 2d Benefice, the first is void** Ipso facto **without any Deprivation, so that the Patron may present.** 24 E. 3. 30. **Adjudged.** 26. E. 3. 55. b. **Co.** 4. *Holland.* 75. b. **Resolved. D. Reports, Commendam** 69. 81. **Doctor and Student.** 126. b. 29 E. 3. 44. **Co.** 4. *Digby* 79. 26 E. 3. 1. 9 E. 3. 22. * **Hobart's Reports** 224. **Contra** 11 H. 4. 37. b. 66. ‡ Tr. 14 **Car. B. R. between the** *King and Baldock*, **Adjudged per Curiam in Writ of Error upon such Judgment in Bank upon Demurrer. Intratur Hill.** 13 **Car. Rot.** 1259.

Per Jones J. Jo. 404, 405. the King v. Baldcock ——— Dr. Watson says, If one of our Clergy be created a Bishop Suffragan of England, not any (as he conceives) of the Preferments he had before, do become void; but on the other hand, if he exercise the Office of a Suffragan by Commission he is thereby qualified to hold at one Time two Benefices with Cure, and cites Stat. 26 H. 8. cap. 14. However, his Benefice with Cure, taken after he is Suffragan, may (unless Dispensation prevent) void any Dignity he had before. Watf. Comp. Inc. 8vo. 43. cap. 3. —* Hob. 158. 166.

2. At Common Law, **if an Incumbent had taken a 2d Benefice, with Cure neither the first nor second had been void. Co.** 4. *Holland.* 75. b.

Pluralities were first *prohibited by the Council of Lateran*, held under

3. But by the **General** Council of Lateran, **held** Anno Domini 1215. **it was ordained, That if a Man takes divers Benefices** with Cure **of Souls, the first shall be void,** if he has not the Dispensation of the Pope. **Co.** 4. *Digby* 79.

Pope

Pope Alexander the Third at Rome, In Palatio Lateranensi ibidem inceptum in Anno 1170 & continuatum usque Annum 1179 which was Anno 26 H. 2. Arg. Mo. 436 in the Case of Robins v. Gerard. — 4 Rep. 79. in S. C. by Name of Digby's Case, it is said by the Reporter to have been under Innocent the Third. —— Knighton's Chronicle Inter decem Scriptores, pag. 2422. l. 19, 20. says this Council was held under Innocent the Third, in Anno 1213. —— 2 Inst. 361. mentions it in the Year 1179.

4. This is so recited in Linwood, fol. 81. in the Constitutions of Peckham, where by the Provincial Synod the Constitution of the General Council is confirmed, and the Constitutions of Othobon in Linwood, that the last ought to be void, is repealed as too hard and strict. Co. 4. *Digby* 79.

5. 27 E. 1. Rot. Pat. M. 16. in Appellationibus. Papa dispensavit cum J. de Langeton Cancellario super Pluralitate Beneficiorum suorum cum Curis sive Cura, quæ obtinet, & ulterius dispensavit quod duo alia Beneficia cum prioribus recipere & retinere possit si Regi placuerit, & eidem Cancellario convenienter offerantur & Rex beneplacitum suum intimat per patentes literas.

6. If an Incumbent takes a second Benefice with Cure, by which the first is void by the Canon against the Patron, so that he may present before any Deprivation, yet till Deprivation it is not void as to a Stranger; For if he sue for Tithes against a Parishioner, it is not any Bar against him that he has taken a second Benefice. Tr. 13. Car. B. R. said by Justice Barkley, that Justice Yelverton in his Argument of the Case of *Prust* said, that so it was adjudged.

S. C. cited 2 Lutw. 1307. in Case of Sharp v. French —— S. P. Cro. C. 356. —— Watf. Comp. Inc. 8vo. 9. cap. 2.

7. H. 11. E. 3. B. R. Rot. 21. The Bishop of Durham presented B. to the Prebend of W. of the Church of St. Andrew, and after presented the same B. to the Deanry of the same Church. Et pro eo quod non liceat alicui duas Præbendas in una & eadem Ecclesia Collegiali possidere, ['twas] Adjudged quod Rex recuperet Præsentationem ad Ecclesiam de W. prædicta.

Watf. Comp. Inc. 8vo. 10, 11. cap. 2 cites S. C. by which Case the Dr. says it appears, that if the Church, void by Cession upon Account of the Canon, be of the Gift of the Bishop, and within his Diocese, it may go in Lapse by the Bishop's Neglect to collate, tho' no Deprivation be made of the Incumbent, or Notice given of the Avoidance.

5. Quare Impedit by the King, and *counted by the Possessions of the Bishop of B.* (*who was Patron* of the Benefice) *being in his Hands* and that A. the Clerk and *Incumbent accepted another Benefice*, by which this Benefice is void, and remained void quousque &c, and it was admitted for a clear Voidance. Br. Quare Impedit, pl. 98. cites 24 E. 3. 32.

But it was said elsewhere, that this *ought to have been certified by the Bishop* or the Metropolitan, and that *it is no Voidance in Fact till he be deprived by the Spiritual Law*, and it is only a Voidance in Law before. Ibid. cites 11 H. 4. 37. 59.

9. If a Man *presents one, who has a Benefice, and is admitted and inducted*, this is a Cession without more; *But in Quare Impedit* the *Court shall not take thereof Notice before it be certified*, because it is a Thing spiritual; Per Brown Serjeant. Br. Quare Impedit, pl. 87. cites 14 H. 8. 16. 17.

10. Where the *King presents by reason of* a Plurality and want of Qualification, and Verdict is found for him; in as much as the first Benefice is absolutely void by the taking a 2d. the *Verdict* shall be, that the *Church was full of the King's Presentment* Modo & Forma, as was alledg'd, *and now is void*; For Crook says, that if it be found that the Church is full of the Defendant by the Presentment of the King, that it shall be intended, that it was void by the 2d. Benefice, and that the King presented him anew. Litt. R. 1. Hill. 2 Car. C. B. the King v. Frankwell.

(L. b. 2) Avoidance, by *not reading* the *Articles* &c.

A Preſentee read the Articles, and ſaid, *I give my Aſſent unto them ſo far forth as they agree with the Word of God.* It was adjudged, That this was not ſuch unfeigned Aſſent as the Statute intended, but that it ought to be abſolute and without Condition. Cro. E. 252 pl. 19 Mich. 33 & 34 Eliz. B. R. Smith v. Clerke.

1. 13 *Eliz.* 12. *S.* 3. ENacts, that *every Perſon hereafter to be admitted to a Benefice with Cure ſhall,* * *within two Months after his Induction, publickly read the Articles of Religion in the Church whereof he hath the Cure, in Common-prayer time, with Declaration of his Aſſent thereunto, and be admitted to adminiſter the Sacraments within one Year after his ſaid Induction, (if he be not admitted before) in Pain upon every ſuch Default to be deprived Ipſo facto.*

S. 7. *All Admiſſions, Inſtitutions, and Inductions to Benefices, and all Tolerations, Diſpenſations, Qualifications, and Licences whatſoever to the contrary hereof, ſhall be void in Law.*

* Upon a Trial at Bar in Quare Impedit, the Plaintiff proved, that he read the Articles *upon the 5th of November, where his Induction was 5 September*; This was ruled inſufficient, becauſe not within two Months after the Induction, computing 28 *Days to the Month.* Lev. 101. Paſch. 15 Car. 2. B. R. Brown v. Spence.

In Quare Impedit, the Plaintiff proved, that he *read them in a Porch of a Chapel of Eaſe within the ſame Pariſh* within a Month after his Induction, the Keys of the Chapel being detained from him by the Defendant, and this was admitted by the Court to be a ſufficient Reading of the Articles within the Statute. Lev. 101 Brown v. Spence.

Immediately upon Not Reading the Articles according to the Statute, the Incumbent is deprived ipſo facto; and the Patron may preſent upon ſuch Deprivation preſently if he will, and his Clerk ought to be admitted and inſtituted. Vaugh. 132. in Caſe of Shute v. Higden.——[But no Lapſe ſhall accrue till after Notice to the Patron. 13 El. 12 S 3.]

A Man had a Benefice Compatible, and without ſufficient Diſpenſation took another Benefice Compatible, but did *not ſubſcribe* the Articles as required by this Statute, and yet he *was admitted, inſtituted, and inducted* to the ſecond Benefice, [and died.] And upon Iſſue whether the Church voided per Mortem &c. a ſpecial Verdict found as above. And the Opinion of the Court was, That the firſt Benefice voided per Mortem; and not by the taking the 2d. Benefice; For he never was lawful Parſon thereof, by reaſon of this Statute. D. 377. b. pl. 31. Mich. 23 & 24 Eliz. Anon.——S. C. cited Vaugh. 133. in Caſe of Shute v. Higden.——In ſuch Caſe the Admiſſion and Inſtitution are void, ſo that he *never was Incumbent there*, and conſequently cannot be deprived. And. 63. pl. 136. Trin. 24 Eliz. in Caſe of the Queen v. Biſhop of Lincoln and Cock.——Reſolved by all the Juſtices, abſente Popham, That in Caſe of the Preſentee's not Reading the Articles, the Church becomes void preſently, and there *needs not any Deprivation*; for otherwiſe the Statute would be defrauded at the Pleaſure of the Ordinary, if he would not deprive. Cro. E 679, 680. Trin. 41 Eliz. B. R Baker v. Brent and Robinſon.—— The Church in ſuch Caſe voids preſently, without any Sentence declaratory; For the Statute provides, that he ſhall be ipſo facto deprived, and the Admiſſion, Inſtitution, and Induction are merely void in Law; And Voidance by Act of Parliament need not have any Sentence declaratory. 6 Rep. 29. b. Trin. 44 Eliz. B. R. Green v. Baker & al.

2. In Debt &c. the Plaintiff counts, that H. Dean of Lincoln by Indenture dated 24 July, demiſed to the Defendant the Rectory of M. &c. who therein covenanted to find a ſufficient Prieſt to ſerve in the Church of M. to be approved of by the Dean and his Succeſſors, and to pay him 40 Marks per Annum at the leaſt; and then ſets forth the Statute 29 *Car.* 2. for perpetuating Augmentations to poor Vicarages, which enacts, *That every Augmentation made payable to any Vicar, Curate, &c. ſhould continue payable to them; and that they might recover the ſame by Diſtreſs or Action of Debt*, then he ſays, that 5 July, 32 Car. 2. by the Approbation of the Dean at the Nomination of the Defendant, and with the Licence of the Biſhop he was admitted; and from that time to this was Curate of the Church of M. and for 40 Marks Penſion, due for a Year, he brings this Action. The Defendant pleaded in Bar, and confeſſed the Leaſe and Covenants, but ſays, that the Plaintiff was nominated &c. 5 Nov. 1677, and had Poſſeſſion; but further ſays, that the *Act of Conformity* 13 Car. 2. by which it is enacted, *That all Miniſters* &c. *ſhall, within two Months after the actual Poſſeſſion of their Vicarage or Curacy, declare their Aſſent and Conſent* to all Matters in the Book of Common Prayer, *and upon Neglect thereof ſhall be ipſo facto deprived;*

and

and that the Patron may preſent &c. as if the Incumbent was dead; And that the Plaintiff did not within two Months after his Poſſeſſion declare his Aſſent, and that at no time after the 5th of November the Defendant did nominate the Plaintiff to the Dean to be Curate &c. the Plaintiff in his Replication confeſſed the Nomination 5 Novemb. and that he continued in Poſſeſſion till the 5th of July following, and being in Poſſeſſion by the Conſent and Permiſſion of the Defendant, and by the Approbation of the Dean and Licence of the Biſhop, he, within two Months after the ſaid 5 July, declared his Aſſent and Conſent according to the Statute. The Defendant demurred; the Court agreed, that ſuch Stipendiary may be within the Act of Conformity, tho' that is, that the Patron ſhall preſent as if he were dead, and here was no Preſentation requiſite in this Caſe, but only a Nomination. And that tho' he was ipſo facto deprived for his Neglect in not declaring his Aſſent within two Months after his firſt Nomination and Poſſeſſion, yet this Statute not diſabling him from being nominated De Novo, and he continuing always in Poſſeſſion, and performing his Office by the Allowance of the Defendant and the Dean till the 5th of July; this amounts to a new Nomination, and therefore his declaring his Aſſent within two Months after the 5th of July, makes him a Curate within the Statute, and enables him to bring Action, and Judgment was given for him by the whole Court. 3 Lev. 82. Mich. 34 Car. 2. C. B. Carver v. Pinkney.

(M. b) * *Deprivation.* [And of *Caveats* to prevent Inſtitution &c.]

* Deprivation is a Diſcharge of the Incumbent of his Dignity or Miniſtry, when ſufficient Cauſe againſt him is conceived and proved; for by this, he loſes the Name of his firſt Dignity, and herein two Manner of Ways, either by a Particular Sentence in the Spiritual Court, or by a General Sentence by ſome poſitive or Statute Law of this Realm. 1ſt. Deprivation is in the Spiritual Court for that, that it is grounded upon ſome Defect in the Party deprived, although it be by Act of Law, yet it is deemed as the Act of the Party himſelf. The Cauſes of Deprivation, by Cenſure in the Spiritual Court, are to be referred to the Common Law. 1ſt. *Want of Capacity.* 2dly, * *Contempt.* 3dly † *Crime.* As concerning the firſt, although by the Common Law, if a *Lay Perſon* be preſented, inſtituted and inducted to an eſpecial Benefice, which Curate is altogether uncapable of the ſame, yet the Church is not therefore to be ſaid void as if no Preſentation had been, but it is ſtill full of an *Incumbent de facto licet non de Jure, until* by *Sentence declaratory*, for his Want of Capacity, the Church be adjudged void, and upon this no Lapſe ſhall incur againſt the Lay Patron, without Notice (of ſuch Incapacity and Sentence of Deprivation thereupon) to him given. Dod. of Adv. 73, 74. Lect. 14.

1. IF the Incumbent be deprived, the Church is void by it. 11 H. 4. 60. b. 77.

* Contempt may likewiſe be a Cauſe of Deprivation, as if the Parſon or other Incumbent be *excommunicate, and* he ſo *remains* in his Obſtinacy for the Space of 40 *Days*, he is for this deprivable of his Benefice, and yet the Church is not void in Fact, without Sentence of Deprivation given againſt him; and if before ſuch Deprivation the King, as ſupreme Ordinary and the Head of the Church, would give a Diſpenſation to the Incumbent, that for all the Sentence of Deprivation for his Contempt had, he ſhall hold his Benefice, ſuch Diſpenſation were void [good, Quære] and ſhould reſtrain the Patron from his Preſentation accrued to him by Means of ſuch Deprivation after enſuing. Dod. of Adv. 76. Lect. 14.

† The 3d. Cauſe is Crime, within which may be comprehended *Dilapidation*, or Spoil of the Church Benefice, once in our Books worthy of Deprivation, likewiſe *Schiſm* or *Hereſy*; for the which, or if for ſome other Cauſes the Incumbent were deprived in ancient Time in the Court of Rome upon ſuch Deprivation coming in Queſtion in our Law, the Iſſue ſhould be upon the Avoidance, and it ſhould be tried where the Church or Dignity is. Dod. of Adv. 76.

[So that] 1ſt our Law adjudges *not* the Church actually *void, without a Sentence* of Deprivation as has been before proved. 2dly, That though ſuch *Sentence* of Deprivation be merely *wrongful*, yet the Dignity is void, and the *Sentence remains in* his *Force until* it be *releaſed.* 3dly, and laſtly, If the *Party deprived* within Time require by this Law an * *Appeal*, (upon ſuch Sentence of Deprivation given againſt him at the Court of the high Juriſdiction) ſuch is the Nature of an Appeal that *it holds* (*the Sentence* upon which it was firſt brought) in *Suſpence*; becauſe in the Common Law it is ſaid to have Effectum ſuſpenſum prioris Pronuntiati; and therefore if it be brought upon Deprivation, it voids the Vigour thereof, and revives the former Dignity; for ſuch Church ſhall not be void until the firſt Sentence of Deprivation chance to be affirmed in the Appeal, and thus much of Deprivations in the Spiritual Court ſhall ſuffice at this Time. Dod. of Adv. 76, 77. Lect. 14.——— * The Church is *not void*

void pending the Appeal; for if the Sentence be reverſed, he ſhall not be inſtituted and inducted again. Br. Depoſition, pl. 13 cites 2 R. 2 and Fizh. Quare Impedit 145.

If a Parſon takes ſeveral Benefices Incompatible without Licence or Plurality, this is *a Voidance in Law*, but *not in Fact*; For he *ought firſt to be deprived* by the Biſhop, and then the Patron may preſent, and the *Patron may ſue for the Deprivation*. Br. Quare Impedit, pl. 51. cites 11 H. 4. 37. 59.——Parſon took a 2d Benefice above 8 l. per Annum, by which the firſt was void. But *by Patron's Conſent continued Poſſeſſion*. Per Richardſon J. He cannot be any way removed till Lapſe incur. Het. 116. Fowler's Caſe.

2. **If an Incumbent** be deprivable, **yet the Church is not void before Deprivation. Contra. 17 E. 3. 59. b.**

If a Church become void, and a Stranger enters, a Caveat with the Regiſter of the Biſhop, that none be inſtituted to that Church until he be made Privy thereunto, and the *Biſhop before* that he have *Notice* of the Caveat *inſtitutes an Incumbent*, the Inſtitution is merely void in the Spiritual Law; for the Regiſter ought to notify the Caveat to the Biſhop; and his Negligence in that ſhall not prejudice him that entered the Caveat; And if the Biſhop have Notice of the Caveat, and gives Day to him that puts it in, and before that Day he inſtitutes an Incumbent, this is merely void; for the *entering of a Caveat is as a Superſedeas* in our Law. Goldsb. 146. Hill. 43 Eliz. cites it as ſaid per Dr. Amias in the Lord Zouch's Caſe.——Inſtitution and Induction ſtand good, tho' a Caveat was entered before; and the Eccleſiaſtical Court cannot meddle with it. Litt. R. 165. Stephens v. Criſp.

3. **If** after Caveat **entered &c.** a Clerk be preſented, inſtituted and inducted, **though it is not good by the** Canon Law, **yet the Church is full in our Law; For the Breach of the Caveat is but a Breach of the Canon, and does not make the Inſtitution void. Mich. 15 Car.** between *Phipps and Hayter*, **per Curiam, and Prohibition granted to ſtay a Suit in the Arches after the Induction to avoid the Inſtitution for this Cauſe.**

A Caveat was entered with the Biſhop *not to admit without giving Notice*, yet Admiſſion is good; but if he admits one that has no Right, he is a Diſturber, but otherwiſe the Caveat does nothing but only to make the Biſhop careful what Perſon he admits. 2 Brownl. 119. Anon.——A Caveat is *of Force* for 3 Months, and any one may ſafely preſent after the End of 3 Months, as if no Caveat had been entered; Per Dr. Talbot. Cro J. 464 Hutchings v. Glover.

The *King was Patron* of the Church of D. and *B. Incumbent. W. entered a Caveat in the Life-time of B. then lying in Extremis*, viz. Caveat Epiſcopus, ne quis admittatur &c. niſi Convocatus the ſaid W.——*B. dies*. J. S. a *Stranger preſented M. who was* inſtituted and *inducted*, and *W. preſented his Clerk, who was* likewiſe inſtituted and *inducted*, the *King likewiſe preſented his Clerk who was* inſtituted and *inducted*, and it being a Queſtion in the Spiritual Court, which of thoſe Clerks had the beſt Right; Sentence was given there, that the firſt Inſtitution was void by reaſon of the Caveat, and then the Church being full of the 2d. Incumbent, the King was put out of Poſſeſſion, and ſo his Preſentment void. But it was reſolved, 1ſt. That the Caveat was void, it being * entered in the Life-time of the Incumbent. 2dly, That the Church was full by Inſtitution againſt all Perſons but the King, and then the Preſentation by W. was void, by reaſon of the Super-inſtitution of the Clerk of the Stranger; and ſo the Preſentation of the King was good. Poph. 133. Hill. 15 Jac. B. R. Morgan v. Roan.—— * S. P. per Mountague Ch. J. Cro. J. 464. Hutchings v. Glover.

4. If the Patron preſent one that is merely a *Layman within the Age of* 25, and he upon this be admitted, *inſtituted, and inducted*, and afterward a *Qua. Imp.* be brought againſt the Patron and the ſame Incumbent, whereof *Judgment is given by the Default of the Incumbent, where* indeed the *Incumbent was never* at any time duly *ſummoned* according to the Law, by reaſon of which Judgment the ſame *Incumbent is removed*; if upon this afterward the ſaid Incumbent *by Sentence* declaratory be *deprived* in the Spiritual Court *for want of Capacity* in Suit there, for the Cauſe of his Incapacity exhibited againſt him, ſuch Sentence is good, and available in the Common Law, although the ſaid Incumbent were before removed from his Benefice by the Judgment given againſt him in the Qua. Imp. For though ſuch declaratory Sentence given againſt him by the Spiritual Law cannot remove him that is removed already, yet it ſhall make this Incumbent *anſwerable to the next Incumbent for all the mean Profits* received by him that was the firſt Incumbent, from the time of his Induction. Yet if the firſt Incumbent ſo deprived will afterward *bring a Writ of Deceit upon the Judgment* given againſt him in the Quare Impedit by Default, *becauſe he was not ſummoned* as aforeſaid, he ſhall have Judgment herein, and *the ſame Deprivation* had in the mean Seaſon in the Spiritual Court *is no Impediment thereunto*; for in the ſaid Suit of De-

Deceit the Incumbency ſhall not be in Queſtion, but only the Diſturbance of the Plaintiff in the Quare Impedit. Dod. of Adv. 74, 75, 76. Lect. 14.

(N. b) Entry into *Religion.*

Fol. 362.

1. IF an Incumbent enters into Religion, the Church is void thereby. 11 H. 6. 60. b. 76.

It is a Rule of the Canon Law, that Beneficium non vacat per Religionis Ingreſſum ante Profeſſionem, niſi de Conſenſu Ingreſſi.

2. But otherwiſe where the Diſpenſation is after. Contra. 11 H. 4. 60.

(O. b) *Lapſe.* *What* it is, and the Commencement.

1. Mich. 3. E. 1. B. Rot. 105. Staff. The Biſhop of Coventry and Litchfield pleaded a Collation by Lapſe Autoritate Concilii againſt the Prior of Landa to the Church of Patingham.

2. 6 E. 1. Rot. Patentium Hemb. 25. In a Quare non Admiſit by the Abbot of St. Mary Eborum againſt the Biſhop of Norwich the Biſhop made Title by Laple, ſcilicet, that he collated Autoritate Concilii poſt Lapſum ſemeſtre, ſcilicet, tali Die &c. and there after in the Judgment it is ſaid, Quia tempus ſemeſtre Autoritate Concilii non incipit verſus Patronum nili a tempore Scientiæ Mortis &c. (Quære what Council is intended) P. 9. E. 1. B. Rot. 51. it appears that Lapſe was given per Concilium Lugdunenſe poſt tempus Semeſtre. In a Writ in the time of E. 2. cited Co. 6. *Cateſby* 62. according.

3. Bracton. libro 4. fol. 241. Lapſus temporis de Conſtitutione Lateranenſi.

2 Inſt. 275. in the Comment on the Statute de Bigamis cap. 5. takes notice of the Difference between Bracton and Briton, as to the Council whether of Lyons and Lateran, and ſays that Fleta lib. 1. cap. 32. [S. 34] mentions Lyons; He adds, That the Pope endeavoured to take away the Preſentations from Princes and Lay Patrons

4. Britton. fol. 225. If the Church remains diſcounſelled beyond 6 Months, then according to the Council of Lyons by the Diſcord of the Parties the Biſhop ſhall be in the Place of a Counſellor, and ſhall give the Church to any Clerk having every one's Right; But Walter Selden, in his Book of Tithes, 390. ſays that the Manuſcripts of Breton have for de Lions de Latt. which is without Doubt for de Lateran.

5. Selden in his Book of Tithes fol. 388. holds that Lapſe was received in the Laws of England from the General Council of Lateran held in Anno 25 H. 2.

6. In Hoveden. fol. 326. there, among the Canons of the Council of Lateran held under Alexander the Third, Anno Domini 1118. in Time of King H. 2. there is ſuch Canon, Cum vero Præbendas, Eccleſias, ſeu quælibet Officia in aliqua Eccleſia vacare contigerit, vel ſi etiam Modo vacant, non diu maneant in Suſpenſo, ſed infra ſex Menſes Perſonis, qui digne adminiſtrare valeant, conferantur. Si autem Epiſcopus, ubi ad eum ſpectaverit, confere diſtulit, per Capitulum ordinetur.

7. Before the ſaid Council the Patron was not limited to any Time but might preſent at his Pleaſure without any Lapſe. Selden in his Book of Tithes 387. Bracton. lib. 4. 241.

to preſent by Lapſe; For that the Conſtitution ſays, Quod Collatio Beneficii eſt Res Spiritualis & aliter Credentes eſſent Hæretici; And the Common Law ſays, That a Preſentation to a Benefice is temporal, and

and is ſo declared by divers Acts of Parliament. At this Council, after 6 Months, the Dioceſan ſhall preſent; The Regiſter ſaith, That to preſent by Lapſe was Dioceſanis ſpecialiter indultum after 6 Months, and yet if after the 6 Months the Patron preſents before the Dioceſan collate, he ought to receive his Clerk, notwithſtanding the General Council; But when the King's Turn came to preſent Jure Coronæ by Lapſe the Regiſter ſaith, Nullum Tempus occurrit Regi ex Conſuetudine hactenus obtenta in Regno Angliæ; ſo as the Council did not bind the Right of the King, nor could the Dioceſan preſent by Lapſe, until it was ei indultum; that is, until it was allowed to him by Conſent of the Realm, with ſuch Limitations and Reſtrictions, and with binding him in many Caſes to give notice, as was thought juſt and reaſonable in Subjects Caſes, for the better Service of God and Inſtruction of the People; But the King, who is Supremus Dominus, loſeth not his Preſentation by any Lapſe at all, the ſaid Conſtitution notwithſtanding. — Ante Concilium Lateranenſe nullum currebat Tempus contra Præſentantes, but the Biſhop was to provide one to ſerve the Cure in the mean time, and the Patron might preſent when he would; but our Lapſe is not according to the Times and Perſons expreſſed in the Canons; For they give four Months to a Lay Patron, and ſix Months to an Eccleſiaſtical &c. neither hath therein the King any ſupreme Title by them to confer by Lapſe; And by the Council Tempus Semeſtre is to be accounted per Dies, & non per Menſes Anni; And therefore we hold, That the Time and Title to preſent by Lapſe, is Per Legem Angliæ, occaſioned and eſtabliſhed it may be by reaſon of the ſaid general Council. 2 Inſt. 361. And ſays, ſee lib. 6. fol. 62. in Catesbye's Caſe.

8. **In the Book which is in the Exchequer, whereof the Title is Tranſcriptum Chartarum Comitis Cornubiæ, there is a Charter** 60. & 168. **by which the Biſhop of Norwich recites,** Cum per Lapſum Temporis Autoritate Concilii de Priore præficiendo in Monaſterio de Eya quod eſt de Patronatu Ricardi Comitis Cornubiæ hac vice ad nos devoluta ſit Poteſtas, and **leaſt this ſhould draw a Right to him and his Succeſſors, they put their Seal thereto &c.**

Fol. 336. 2 Inſt. 361.

9. **Regiſtrum Originalium fol. 42. b. Inter Prohibitiones,** Quia ſecundum Legem & Conſuetudinem Regni noſtri Angliæ **Epiſcopi per Lapſum Temporis ante 6 Menſes conterre non debent &c.**

10. **P. 9. E. 1. B. Rot. 51. In Aſſiſe of Darrein Preſentment by the** Abbot of Lyra **againſt the Archbiſhop of Canterbury, the Defendant ſays that the Church is full of his** Collation Ratione Concilii Lugdunenſis, **and being demanded, Per quem Articulum ejuſdem Concilii contulit eandem Eccleſiam, dicit quod ipſe eſt Archiepiſcopus & primas Angliæ & quod non vult nec debet ad hoc concedere in Curia iſta, and becauſe the Plaintiff** Preſentavit ante Lapſum Temporis ſemeſtris, & **Archiepiſcopus nihil dicit ſed quod ipſe ad Eccleſiam contulit Autoritate Concilii Lugdunenſis nullam certam Rationem ſuper eo exprimendo & ſic poſſit omnibus de Regno Præſentationes auferre,** & Conſuetudo Regni Angliæ ſit quod nullus Patronus debet a Preſentatione Eccleſiæ ſuæ excludi Autoritate Concilii, niſi negligens ſit, & remiſſus in præſentando infra tempus ſemeſtre, ideo querens recuperet **&c. and Writ to the Biſhop granted &c.**

Watſ. Comp. Inc. 8vo 197. cap. 12. Lapſe to the Ordinary is *in reſpect of* his Epiſcopal Care, but to the King is as ſupreme Patron, and is the Reaſon that Rome did not claim it Per Doderidge Roll. R. 464 in the Caſe of Colt v. Glover, cites Doctor and Student —— 'Tis not an *Intereſt* but a Truſt or Adminiſtration. Per Hobart Ch. J. Roll. R. 475. in S.C.

11. A Lapſe *is* an Act and Office of Truſt repoſed by Law in the Ordinary, Metropolitan, and laſtly in the King to provide the Church of a Rector in default of the Patron, and yet as for him and to his Behoof. Hob. 154. Mich. 10 Jac. in the Caſe of Colt v. Glover.

(P. b) By *what Time* the Patron may preſent before *Lapſe* ſhall *incur*.

Watſ. Comp. Inc. 8vo. 185. cap. 12. cites S. C.

1 **By the Common Law of England** as well Clerks as Laymen ſhall have 6 Months **to preſent before Lapſe ſhall incur. Doctor and Student. 116. b.**

2. By

2. By the Common Law of Scotland Laici Patroni quadrimeſtre ſeu quatuor Menſium, Eccleſiaſtici vero ſex Menſium Spatium habent ſibi conceſſum ad Præſentandum Perſonam idoneam Eccleſiæ vacanti. Skene Regiam Majeſtatem. 10. b. Godolph. Rep 245. cap. 22. S 2. S. P. cites the ſame Book, and ſays we need not inquire into the Reaſon of that Difference ſo, for Reaſons beſt known to their own Intereſt; the Common Law impartially levels them both to one and the ſame equal Standard of ſix Months.

3. But Ja. 6. pl. 1. cap. 7. pl. 7. cap. 102. pl. 12. cap. 119. 158 Concedit Patrono Laico Spatium ſex Menſium, infra quod præſentare debet. By the Petit Cuſtoms of Normandy, the Patrons as well Laick as Eccleſiaſtick have ſix Months to preſent after the Death of the laſt Poſſeſſor. Quod vide Chapter of Patronage. S. 70.

or Diſproportion; let it ſuffice the Laiety, That it was the Canoniſt's Pleaſure to have it ſo, for Reaſons beſt known to their own Intereſt; the Common Law impartially levels them both to one and the ſame equal Standard of ſix Months.

(P. b 2) *How* the *Six Months* ſhall be *reckon'd.*

1. QUARE Impedit againſt the Biſhop of A. who juſtified for Lapſe, The Plaintiff replied, That before the 6 Months ended, he preſented &c. The Defendant rejoined, That the Church to which the Preſentment was, is a Church with Cure of Souls, and the Pariſhioners there are Welchmen, and ſpeak and underſtand no other Language but Welch, and that the Preſentee could not ſpeak or underſtand the Welch Language; For which Cauſe he refuſed him, and gave notice of the Plaintiff of the Refuſal and Cauſe thereof; and it was agreed and reſolved by the whole Court that the Computation of the 6 Months in ſuch Caſes, ought *not to be according to the Kalendar* January, February &c. *but ſecundum numerum ſingulorum Dierum, allowing* 28 *Days to every Month.* Le. 31. Trin. 27 Eliz. C. B. Albany v. the Biſhop of St. Aſaph. *But* Mich. 3 Jac. C. B. where the Church voided by Deprivation of the Incumbent, It was adjudged that the 6 Months ſhould be accounted according to the Kalendar ſix Months, and not according to 28 Days to a Month, And this Judgment was affirmed in Error. Rep. 62. Catesby's Caſe.——Yelv. 102 S. C. by Name of Catesby v. the Biſhop of Peterborough. —— Cro. J. 141. Trin. 4. Jac. S. C.——Jenk. 282 pl. 282. pl. 8 cites S. C. —— S. P. 2 Inſt. 361, and ſays it was foreſolved in the Time of E. 2. and in the Time of H. 8.--Verba Accipienda ſunt ſecundum ſubjectam materiam, and therefore, becauſe this Computation of Months concern thoſe of the Church, there is great Reaſon that the Computation ſhould *be according to the Computation of the Church which they beſt know.* 6 Rep. 62. Mich. 3 Jac. C. B. Catesby's Caſe —S. P. 2 Inſt. 361.

(Q. b) How the 6 Months ſhall be Reckoned. *From what Time.*

1. TEmpus Semeſtre Autoritate Concilii non incipit verſus Patronos niſi a Tempore ſcientiæ Mortis Perſonæ (that is to ſay of the laſt Incumbent. 6. E. 1. Rot. Patentium Membrana. 25. Adjudged in a Writ of the Time of E. 2. cited Co. 6. *Catesby.* 62. accordingly, and ſays Per legem & Conſuetudinem Regni hactenus Uſitatas. Godolph. Rep. 248. cap. 22. S. 6.

2. As if the Incumbent dies beyond Sea, the 6 Months ſhall not be reckoned from the Death, but from Knowledge of the Death by the Patron. 6 E. 1. Rot. Patentum Membrana 25. between the Abbot St. Mary Eborum and the Biſhop of Norwich, adjudged in a Quare non admiſit. Godolph. Rep. 248. cap. 22. S. 6.

3. The ſix Months ſhall not be reckoned from the Death of the laſt Incumbent, but from the Time that the Patron might by Computation per Rationabiles Dietas, having Regard to the Diſtance of the Place where he was at the Death of the Incumbent, if he was within the Godolph. Rep. 248. cap. 22 S. 6. ——As to the Notice

in ſuch Caſe, Conſideration ought to be had to the Diſtance of the Place where the Patron is. D. 327. b. Marg. pl. 7. cites S. C. Mich. 5 E. 1. Rot. 100. Lib. Record, fol. 14. Queen Eleanor v. Biſhop of Lincoln.

* Fol. 364.

the Realm **at the Time**, come to the Knowledge of the Death **of the Incumbent; for he ought afterwards to take Notice at his Peril,** and * **not before, inaſmuch as he** was in other County **than where the Church is, and than where the Incumbent died. 5 E. 1. 75. adjudged.** *Queen Eleanor*'s **Caſe. Contra Co. 9.** *Catesby* 62. **b.**

Godolph. Rep. 248. cap. 22. S. 6.

4. So **a Fortiori it would be, if the** Patron were over the Sea at the Time **of the Death of the Incumbent. 5 E. 1.** *Queen Eleanor*'s **Caſe 75. agreed**

5. Apud Scotos, **by the Common Law of the Realm the Time limited for the Patron to preſent, is to be computed** a tempore Scientiæ non autem **a tempore** Vacationis **beneficii. Skene Regiam Majeſtatem 10. b.**

6. **See the** Petit Cuſtoms of Normandy, **Chapter of Patronage. S. 70. The 6 Months ſhall be counted** from the Day that the Death of the laſt Poſſeſſor is commonly known. **In the antient Book, fol. 40. b.**

7. **Regiſtrum Originale, fol. 42. Inter Prohibitiones.** Quia ſecundum Legem & conſuetudinem Regni noſtri Angliæ Epiſcopi &c. Beneficia &c. vacantia per lapſum temporis ante ſex Menſes a tempore Vacationum eorundem tranſactos conferre non debent nec conferre conſueverunt temporibus retroactis &c.

S. P. Per Cur. 2 Salk. 539. Mich. 3 W. & M. B R.

8. **If the Ordinary** refuſe a Clerk **becauſe he is** Criminoſus, **in this Caſe the Patron ſhall not have 6 Months to preſent** after Notice **given,** but from the Voidance. **14 H. 7. 21. Curia 18 H. 7. Kell. 50. b. Quære.**

Hele v. the Biſhop of Exeter. For the Crime is as much in the Conuſance of the Patron as the Biſhop.

Godolph. Rep. 249. cap. 22. S. 6. ——2 Salk. 539 ſays that the Lapſe ſhall incur from the Refuſal. Per Cur B. R. Hele v. the Biſhop of Exeter.

9. **If the Ordinary** refuſe **a Clerk for Cauſe of** Illiterature, **the Patron ſhall not have 6 Months from the** Notice thereof but from the Voidance. **D. 15. 16. El. * 227. 7. Per Curiam.**

——* This ſhould be 327. pl. 7.

* S. P. Brownl. 165. Auſtin v. the Biſhop of London. — S. P. D. 327. b. pl. 7. Mich. 15 & 16 Eliz. Anon.

10. **If a Church voids** by Reſignation or * Deprivation, **the 6 Months ſhall be reckoned** from the Notice thereof **to the Patron, and** not from the Voidance. † **1 H. 7. 9. b. D. 15. 16. El. 327. 7. Dr. & Student 116. 5 E. 4. 3. b.**

——Godolph. Rep. 249. cap. 22. S. 6.——† Br. Quare Impedit, pl 163. cites S. C.——S P. Br. Quare Impedit, pl. 159. cites Doct. & Stud. lib. 2 But *upon the Death, Creation and Ceſſion of the Incumbent*, the 6 Months ſhall be accounted *from the Time of the Death, Creation and Ceſſion.*——S. P. Godolph. Rep. 245. cap. 22. S. 2.——S. P. By Lord Dyer, Becauſe it may be done ſecretly in the Chamber of the Ordinary; and therefore the Biſhop is to give Notice thereof to the Patron. 3 Le. 45. pl. 66. Mich. 15 Eliz. Anon.

11. In Quare Impedit the Time of the Lapſe ſhall be accounted *from the Voidance*, and *not from the Time of the Preſentation made.* Per Cur. Br. Quare Impedit, pl. 90. cites 14 H. 7. 21.

The ſix Months ſhall be accounted from the Inſtitution between Common Perſons to bar the right Patron of his Quare Impedit by the Statute of Weſt 2 Fin. Law 8vo. 196.

12. The ſix Months ſhall be *accounted from the Time of the Admiſſion and Inſtitution as to an Uſurper*, and not from the Time of the Voidance; but *the Biſhop as to the Lapſe ſhall count* the 6 Months *from the Time of Vacation*; and *againſt a Common Perſon*, it is full *by Admiſſion and Inſtitution* without Induction, and from the Induction the 6 Months ſhall be accounted there; and ſo *where the King preſents* he ſhall account the 6 Months *from the Time of Inſtitution.* Br. Preſentation, pl. 46.

13. If

13. If the *Incumbent dies*, and the *Patron preſents* another, and the *Biſhop* upon Examination *finds him unable* for Literature, in this Caſe the Juſtices were of Opinion that the 6 Months ſhould be *accounted a Tempore mortis* &c. D. 327. b. pl. 7. Mich. 15 & 16 Eliz. S. P. Watſ. Comp. Inc. 8vo. 380. cap. 20.—S. P. Becauſe the Patron ought to preſent a Clerk that is qualified, otherwiſe his Preſentation is void, and ſhall not prevent the Lapſe. 4 Mod. 140. Trin. 4 W. & M. B. R. in Caſe of Hele v. the Biſhop of Exeter.

14. If an Avoidance be *cauſed by* an *Union* (for ſo it may be) then the 6 Months ſhall be computed *from the Time of the Agreement* upon that Union; for in that Caſe the *Patron is* not ignorant of, but *privy* to the Avoidance; for there can be no Union made, but the Patron muſt have the Knowledge thereof; and then it is to be appointed who ſhall preſent after the Union, as whether one or both, either jointly, or by Turns one after another, as the Agreement is upon the Union. Godolph. Rep. 245. cap. 22. S. 2.

(R. b) Lapſe. Notice. In what Caſes Lapſe ſhall incur without *Notice*, and where with Notice. *Refuſal* [&c.]

1. **If the Ordinary refuſe a Clerk, becauſe he * is Criminoſus, he ought to give Notice thereof to the Patron; otherwiſe no Lapſe ſhall incur.** 38 E. 3. 2. Br. Quare Impedit, pl. 64. cites S. C. Per Finch.—S. P. Per Billing, quod Needham conceſſit. Br Quare Impedit, pl. 130. cites 8 E. 4. 2.—D. 293. b. pl. 3. cites Fitzh. N. B. Tit Quare Impedit.—* *As* for being a Heretick. Dal. 51. pl. 19.——Where the Ordinary, after that the Patron has preſented, inquires, and *finds the Clerk Criminoſus*, and the Time of Lapſe by this paſſes, there he ſhall not make Collation by Lapſe, but muſt firſt give Notice to the *Patron* if he be a *Layman*; *Contra* if he be a *Spiritual Man*. Note the Difference; for he *may know his own Clerk*. Br. Notice, pl. 6. cites 14 H. 7. 21.—Br. Quare Impedit, pl 90. cites S. C.——S. C. Cited by Mounſon J. 3 Le 47. Mich. 15 Eliz. Anon.——Watſ. Comp. Inc. 8vo. 379. cap. 20. cites S. C.——But 2 Salk. 539. ſays, That if the Ordinary refuſe Quia Criminoſus, he need not give Notice of his Refuſal; for the Crime is as much in the Conuſance of the Patron as of the Biſhop. Per Cur. Mich 3 W. & M. B. R. Hele v. the Biſhop of Exeter.

2. **If the Ordinary refuſe a Clerk** for a private Cauſe, **as if the Clerk upon the Examination of the Ordinary** confeſſes himſelf to be a Common Adulterer, or that he comes to the Preſentation by Uſury and the like; **In this Caſe the Ordinary is bound to give Notice thereof to the Patron, or otherwiſe no Lapſe ſhall incur.** 18 H. 7. Kell. 50. b.

3. So **Notice ought to be given of a Refuſal** for a Notorious Crime, as becauſe he is a Common Adulterer, or a Common Murderer. 18 H. 7. Kell. 50. b. **Contra per Frowick.**

4. If a Lay Patron **preſents a Clerk who is refuſed becauſe he is** not well letter'd, **no Lapſe ſhall incur without Notice given to the Patron of this Refuſal.** 18 H. 7. Kell. 49. b. S. P. F. N. B. 35. (I) —— But *on Notice* Lapſe ſhall be to the Biſhop if the Parſon does not preſent another within the 6 Months after the Church became void. And. 30. pl. 70 Paſch. 3 Eliz Anon. —— If I preſent my *Clerk* to the Biſhop, and he *finds him Not Able*, and refuſes him, there if he gives Notice to me, and I do not preſent within 6 Months, he may preſent by Lapſe; but if he does not give Notice, but preſents by Lapſe, there after the 6 Months I may have Quare Impedit againſt him Per Newton and Paſton. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

5. **If a** Spiritual Patron preſents **a Clerk who is refuſed** for Default of Literature, **there Lapſe ſhall incur without Notice, becauſe the Law intends, That he might have ſufficient Knowledge of his Sufficience before he preſented him.** 18 H. 7. Kell. 49. b. See (T. a) pl. 1, 2.

But if the first was above 8 l. the Patron must take Notice at his Peril; for it is void by Act of Parliament, and the Words are, That it *shall be void as if the Incumbent was dead.* Per Jones J. Jo. 405. S C. —— If a Man be presented to a Benefice of 6 l. per Ann. and after to another of 20 l. if he is *Deprived for Plurality*, the Bishop must give Notice to the Patron; for 'tis at the Common Law, and 'till Deprivation 'tis no Cession. Godb. 23. Pasch. 26. El. C.B.

Where an *Avoidance* is *by Statute* no Notice need be given to the Bishop. Brownl. 16.

6. If an Incumbent of a Church with Cure of **the Value of** 5 l. per Annum, takes a 2d Benefice which is not within the Statute of 31 El. **tho' no Lapse shall incur to the Ordinary by this Voidance by the Canon before Notice given to the Patron, yet after Notice Lapse shall incur if he does not** * **present within 6 Months. Trin. 14 Car. B. R. in** *Baldock's* **Case, by Jones and Barkley.**

* Fol. 365.

S.P. Br Notice. pl. 10. cites 1 H. 7. 9 —— Br. Quare Impedit. pl. 117, cites S. C. —— The Patron shall take Notice *of every Voidance* of an Advowson, *except Resignation*, and of this the Ordinary shall give Notice to him. Br. Notice, pl. 27. cites Frowick's Reading, 117. —— If the Avoidance of a Church is by *Resignation, or* such like, *where the Bishop is privy* or Party *to the Cause of the Avoidance* &c. Notice must be given of such Avoidance to the Patron, or otherwise the Ordinary shall not take Benefit of the Lapse. D. 293. b. pl. 3. Mich. 12 & 13 Eliz. in the Case of Bedinfield v. Pickering. —— If an *Usurper presents within the 6 Months, and* the Presentee *is in for 6 Months, no Notice being given of the Resignation*, yet that shall bind him, and he shall be put to his Right of Advowson. Secus if the Ordinary had *collated*, because the Induction is Notorious to the Country, and the Patron ought to take Notice of it at his Peril to prevent the Usurpation of a Stranger. Noy 65. Servien v. Bishop of Lincoln.

7. If a Resignation **be made to the Bishop, no Lapse shall incur without Notice thereof given to the Patron.** 18 H. 7. Keil. 49. b. 18 El. D. 347. 12.

8. **So if the** Bishop dies who took the Resignation, **yet Lapse shall not incur to his** Successor **without Notice given.** 18 H. 7. Keil. 49. b.

In Case of *Resignation and Deprivation* no Lapse shall incur to the King, but after Notice given to the Patron. Jenk. 244. pl. 28.

9. **So after such** Resignation **no Lapse shall incur to the King after a Year and a Half for Default of the Ordinary and Metropolitan; because** no Lapse shall incur to the King where no Title of Lapse was to the inferior Ordinary. D. 18 El. 348. 12.

* S. P. For it is a Spiritual Act, of which the Patron is not bound to take Conusance before Notice given. Br. Quare Impedit, pl. 127, cites S. C. —— The Notice of *Deprivation or Resignation* ought to be given *by the Ordinary* himself, and *not by a Stranger.* Br. Notice, pl. 25. cites Doct. and Stud. lib. 2. cap. 31. —— If a Parson be *deprived* by the Ordinary, *or reads not his Articles*, in which Cases the Church is void, yet *Notice must be given to the true Patron for the Time*, [or Turn] or else the Lapse incurs not, (which is inconvenient for the Church, and a Prejudice to the Ordinary) for how shall he in this Case assure himself of a sufficient Notice; for if he give *Notice to him that is not Patron for this very Turn*, his Notice *is vain*, and the true Patron perhaps knows not of the Deprivation; or if he knows it, needs not present without Notice given him. In this Case Sir H. Hobard Ch. J holds, That *his Way is to award a Jure Patronatus*, with solemn Premonitions Quorum Interest; and then Inquiry being made who is Patron, to give him Notice; and if he presents not within 6 Months, then the Ordinary may collate, *tho' that shall not bind the very Patron*, yet it shall excuse the Bishop from Disturbance upon special Matter shew'd; but if the other supposed Patron present, and the 6 Months incur, Quære if the true Patron be bound, since there was no Notice given him. And the Opinion of Hobart is, That tho' without Notice the Patron is not bound by the Lapse, yet that is nothing to save the Usurpation of another pretended Patron, who is not Subject to give Notice. Godolph. Rep. 181. cap. 16. S. 4. cites the Case of Elvis v. the Archbishop of York.

10. *Upon* * *Deprivation* the Ordinary shall give Notice. But it is said elsewhere, that of *Voidance, Cession, and Creation*, the Patron shall take Notice at his Peril; and the same Law of *Resignation* as of Deprivation Br. Notice. pl. 24. (bis.) cites 5 E. 4. 4.

11. In Quare Impedit against the Bishop and his Collatee the Bishop pleaded, *That A. presented J. S. to him at B. and he being getting on Horseback, commanded J. S. to attend him at N. within the same Diocese within 3 Days, that he might examine him and inquire of his Ability; but J. S. came not then nor in 6 Months after, by which he collated by Lapse Absque hoc, that the said W. L* [as the Plaintiff had counted] *gave the said Manor to E. L. in Tail, Priest &c.* And it was at length held, that the Ordinary shall have Time to be advis'd; for in Examination he is Judge, and not Officer;

Officer; And that the Time and Place given were convenient, and that he need not give Notice to the Patron, that J. S. came not be examin'd becauſe he had not refus'd him. Br. Quare Impedit, pl. 91. cites 14 H. 7. 21. 15 H. 7. 6, 7, 8.

12. If the Biſhop refuſe a Clerk *becauſe he is a Villein*, as he may do, he ſhall give Notice thereof to the Patron, whether he be Lay or Spiritual. Br. Quare Impedit, pl. 92. cites 14 H. 7. 28. Per Brian and the greater Part of the Juſtices and Serjeants. Br. Notice, pl. 7. cites S. C.

13. Patron preſents a *mere Layman*, who is admitted and inſtituted, Notice muſt be given before Lapſe ſhall incur. And. 16. pl. 34. Paſch. 12 Eliz. Bennefield v. Pickering. S. C. Bendl. 195. pl. 234. Adjudg'd. — S. C. D. 292. b. pl. 1. Mich.

12 & 13 Eliz. Adjudg'd. —— 2 Show. 54 Per Scroggs Ch. J. Paſch. 31 Car. 2. B. R. in the Caſe of Hill v. Boomer. S. P.

14. 13 *El.* 12. Enacts that *No Lapſe ſhall accrue 'till* 6 *Months after Notice of Deprivation for being under Age, Not reading the* 39 *Articles, or Oppugning the ſame, given to the Patron by the Ordinary.* Where one under the Age of 23 Years was preſented to a Benefice, the Queſtion was, Whether the Patron ſhould have Notice, or that Lapſe otherwiſe ſhall not incur to the Biſhop, which is grounded upon this Statute. And it was held clearly by Mallet, Heath, and Brampſton Juſtices, That the Notice ought to be given, or otherwiſe that Lapſe ſhall not incur. But they agreed, That if the Act had avoided the Preſentation alſo, as well as the Admiſſion, Inſtitution, and Induction, that in ſuch Caſe the Patron ought to have taken Notice at his Peril, being an Avoidance by Statute, if the Proviſo help it not. Mar. 119. Mich. 17 Car. the Biſhop of Hereford v. Okeley.

(S. b) In what Caſes, and in what not, Lapſe ſhall incur without Notice for *Collateral Cauſe*, where De Jure Notice ought to be.

1. IN ſuch Caſes where of itſelf no Lapſe would incur without Notice, if the Ordinary **who ought to give the Notice** dies before Notice, **yet no Lapſe ſhall incur to the** Succeſſor **without Notice.** 18 H. 7. Kell. 49. b.

2. **Where Notice is to be given, and** none is given within a Year and a Half, **by which Lapſe ought to run to the** King **if Notice had been given, yet no Lapſe ſhall incur to the King, becauſe** * **no Lapſe ſhall run to the King, where** no Title of Lapſe was to the inferior Ordinary, **inaſmuch as he comes to ſupply their Default.** D. 18 El. 348. 12. * S. P. Hob. 154. in the Caſe of Colt and Glover v. the Biſhop of Coventry and Litchfield. —— S. P. Cro. J. 93. in the Caſe of Lancaſter v. Lowe.

3. **If Notice ought De Jure to be given,** the Temporalties **of the Ordinary** being in the Hands of the King, **yet it ſeems that no Lapſe ſhall run to the King without Notice to the Patron; for it ſeems that** the Guardians of the Spiritualties **ought to give Notice.** D. 22 El. 369. 54. **will prove this.** Watſ. Comp. Inc. 8vo. 50. cap. 4.

(T. b) *What* ſhall be *ſufficient* Notice where it is requiſite.

1. IF an Ordinary refuſe a Clerk for Illiterature, and notifies it to the Patron by Publick Intimation fix'd on the Door of the Church to which the Clerk was preſented, it is not good without Notice * to the Perſon of the Patron. D. 16 El. 327. 7. Adjudg'd.

2 But where the Patron cannot be found, peradventure ſuch publick Intimation ſhall be ſufficient. D. 16. El. 327. 7.

* S.P. 2 Salk. 539. in the Caſe of Hele v. the Biſhop of Exon.—— The Biſhop refuſed a Clerk, becauſe the *Service to be read* in the Church, to which the Preſentment was, *muſt be in the Welch Tongue*, and the *Preſentee could not ſpeak Welch*, and that the *Pariſhioners underſtood not* the *Engliſh*, and therefore he refuſed him; And all the Juſtices held this a good Cauſe of Refuſal, for he cannot inſtruct his Flock according to his Duty and Charge; but in this Caſe the *Plaintiff* had *preſented* 16 *Days within the* 6 *Months*, and the Biſhop gave *no Notice* of the Inability of the Clerk, *till* 3 *Days after the* 6 *Months expired*; And the Court held that notice ought to be given to the Patron himſelf, if he be reſident in the County, and if not, a publick Intimation ought to be on the Church Door, and notice of this Matter ought to have been given immediately, when he was preſented and examined, or within ſuch convenient Speed as might be; But when the Biſhop is to enquire of the Behaviour of the Clerk, he ſhall have longer Time; And for this Cauſe Judgment was given for the Plaintiff. Cro. Eliz. 119. Mich. 30 & 31 Eliz. B. R. Albany v. Bp. of St Aſaph.—Le. 31. pl. 39. S.C. And Anderſon ſaid, that 22 Days between the Preſentment and the Notice was too large a Delay, and the Defendant has not ſhewn in his Plea any Cauſe for the Juſtifying or Excuſe of it, and therefore upon his own Shewing we adjudged him a Diſturber.—S.P. Carth. 312. in the Caſe of the Biſhop of Exeter v. Hele, where not giving notice till 32 Days after Refuſal was inſiſted to be too long a Delay, and to amount to a Diſturbance Ipſo Facto, becauſe in ſuch Caſe the Biſhop is bound to give notice to the Patron with all poſſible Speed. But the Court gave no Opinion in this Point.

3. The 6 Months ſhall be accounted *upon the Death, Creation, and Ceſſion of the Incumbent, from the Time of the Death, Creation and Ceſſion*; But upon *Reſignation or Deprivation*, it ſhall be accounted *from the Time of the Notice given by the Biſhop*; and if another Biſhop gives Notice this is void as it ſeems. Br. Quare Impedit, pl. 159. cites Doct. & Stud, lib. 2. But ſee F. N. B. that Notice of Reſignation ſhall be given by the Biſhop, where he intends to preſent by Lapſe, Quod vide ibid. fol. 35.

The Statute provides, that Lapſe ſhall not accrue without Notice, and therefore tho' the Patron made no Preſentation within two Years after Deprivation of this Preſentee, for Not ſubſcribing the Articles, yet no Advantage can be taken of Lapſe againſt the Patron. And. 62 pl. 136. The Queen v. the Biſhop of Lincoln and Cock.—— S.P. D. 369. b. pl. 54. Paſch. 22 Eliz. ſeems to be S.C. and that it ſeemed to the Court, that the Queen ſhould not preſent by Lapſe, though the Patron had notice of himſelf of the Not Reading of the Articles by his Preſentee, notice not having been given by the Ordinary.

4. In Quare Impedit &c. the Biſhop, as Ordinary, entitled himſelf to preſent by Lapſe, by reaſon of a Deprivation, for *not ſubſcribing the* 39 *Articles*, and on Iſſue taken, If notice of the Deprivation was given by the Ordinary to the Patron, it was found that the *Biſhop notified in the Church*, the not ſubſcribing *by a certain Intimation ſealed* by him, viz. R. Epiſcopus C. Univerſis Rectoribus, Vicariis, Curatis, non Curatis, Clericis & Literatis *quibuſcunque* infra Dioceſim noſtram C. Salutem. *Cum R.T.* &c. *non ſubſcripſit* &c. *juxta Statut.* &c. commanding them all, and eſpecially the Curate of C. to declare in the ſaid Church of C. the ſaid Non-ſubſcribing &c. This, tho' found to have been *publickly read in Engliſh in the Pulpit* of the Church &c. *and afterwards fixed at the Church Door*, was held by all the Juſtices in Cam. Scacc. except Harper and Mounſon, Abſente Gawdy, to be inſufficient to prejudice the Patron, becauſe it is upon a *Penal Statute* to the Incumbent, and alſo to the Patron, to make him loſe his Preſentment, and therefore ſuch Notice to the Patron *ought to have been Perſonal*, and the Intimation ought to have notified, that the Ordinary had deprived him by declaratory Sentence for his Not aſſenting and ſubſcribing to the Articles according to the Statute; For otherwiſe it ſhall be intended, that the Ordinary is contented to permit him &c. D. 346. pl. 7, 8. Hill. 18 Eliz. Bacon v. the Biſhop of Carliſle & Witton.

5. If

5. If *A. a Spiritual Man has the Preſentation, and B. a Layman the Nomination*, the Preſentation ſhall be made only in A's Name, that hath the Preſentation, and not in B's Name that hath the Nomination; therefore, if the Ordinary ſhould *refuſe the Clerk for Diſability*, notice ſhall be given only by him, to him that hath the Preſentation, and not to him that hath the Nomination. Dod. of Adv. 66. Lect. 12.

(U. b) *In what Caſes* Lapſe ſhall *incur to the Ordinary.*

See (B. c. 2) pl. 3.

1. IF the Church be litigious **between two Patrons, and the one brings his** Quare Impedit, or **Aſſize of Darrein Preſentment againſt the other,** without naming of the Biſhop, **and recovers againſt him, if the** 6 Months be paſſed pending the Writ, **Lapſe ſhall incur to the Biſhop; For no Default was in the Biſhop.** 1 E. 1. Rot. Patentium. H. 15. 6 E. 1. Rot. Patentium Memb. 25. **between the Abbot Saint Mary Eborum, and the Biſhop of Norwich admitted.** 33 E. 3. **Quare Impedit** 194.

In a Quare Impedit, if the *Ordinary be not named*, he may preſent by Lapſe, if the 6 Months *incur Pendente Brevi*;

But being named he cannot take Advantage of any Lapſe, but ought to ſee that the *Cure be ſerved*, by Allowance out of the Profits to be taken by Sequeſtration, and as he can take no Advantage of the Lapſe, ſo neither can the *Metropolitan*, or the *King*; For no Lapſe being againſt the Ordinary, there cannot be any Lapſe againſt them, and one **Duke's Caſe**, was cited by Coke to have been ſo adjudged. Cro. J. 93. in the Caſe of Lancaſter v. Low—— Jenk 281. pl. 7.

If *two preſent ſeverally*, there ſhall be awarded *two Commiſſions* De Jure Patronatus; And if the *one* be *found Patron by the one, and the other by the other*, there the Church is litigious, and if their Titles are not diſcuſſed within the 6 Months, the Biſhop may preſent by Lapſe. Br. Quare Impedit. pl. 80. cites 21 H. 6. 44.

2. But **if the Biſhop** refuſes **my Clerk** without Cauſe, and after the Church * becomes litigious, **no Lapſe ſhall incur to the Biſhop; For this comes by his** own Act. 5 E. 1. 75. **Queen Eleanor's Caſe.** 33 E. 3. **Quare Impedit** 194.

* Fol. 3. 66.

3. **In a** Quare Impedit **againſt a Diſturber, the** Biſhop not **being** named in the Writ, **if the Plaintiff** recovers within the 6 Months, **yet if the 6 Months** incur before the Writ to the Biſhop **taken out the Lapſe ſhall incur to the Ordinary.** 17 E. 3. 75. Fitzh. Na. 48. b. 5 E. 1. 75. **Admitted.**

Where a Man *recovers in Quare Impedit after 6 Months*, and the *Church remains void*, when Writ to the Biſhop comes to him he ought to receive his Clerk. Per Hill quod nullus negavit. Contra, where he had made Collation by Lapſe before. Br. Quare Impedit. pl. 53. cites 11 H. 48.

If a Man brings *Quare Impedit, and 6 Months paſs before Recovery*, and after he recovers, He cannot have Execution by Force of his Recovery, and yet the Law adjudges this Advowſon in him, and Writ of Right of Advowſon ſhall be brought againſt him that recovers, and yet he ſhall *never have Execution*. Kelw 109. pl. 28.

4. So if after the Recovery within the 6 Months **the Defendant brings** Writ of Error, and the 6 Months paſs Pending it, **Lapſe ſhall into the Ordinary.** 17 E. 3. 75.

5. **If the** Biſhop be a Diſturber, **no Lapſe ſhall run by his Diſturbance, though the Church be void by** 6 **Months. Tr.** 3. **Ja. B. R. between** *Palmer* **and** *Smith*. **Reſolved per Curiam.**

6. As **if the Patron preſents to the** Biſhop, **and he** will not examine the Clerk, but delays him, by which the 6 Months paſs, **yet no Lapſe ſhall run to the Biſhop; Becauſe he is a Diſturber, and this comes by his own Diſturbance. Tr.** 3. **Ja. B. R. between** *Palmer* **and** *Smith*. **Reſolved per Curiam.**

7. Lapſe may be of a *Vicarage* appendant to a Prebend, Br. Preſentation, pl. 26. cites 24 E. 3. 26.

8. Of a *Chantery*, which has not Cure, the Ordinary ſhall *not* have Advantage of Lapſe, *unleſs* it be *expreſſed in the Foundation*. Br. Quare Impedit. pl. 131. cites 13 E. 4. 3.

9. If a mere *Layman* be preſented and inſtituted, and no Sentence of Nullity or Deprivation given, the Ordinary cannot collate by Lapſe. Fin. Law. 8vo. 89.

10. If in a Quare Impedit againſt the *Ordinary*, he *confeſſes the Diſturbance*, he cannot afterwards have Lapſe. Br. Quare Impedit. 103. cites 39. E. 3. 15.

11. No Lapſe can be after *Inſtitution*, tho' there be no Induction. Per Popham Ch. J. Goldsb. 164. in the Caſe of Robins v. Prince.

(X. b) Lapſe. In what Caſes it ſhall be *prevented by* the *Naming* of *him in a Writ.*

See (U. b.) pl. 1. in Notis.

1. **If a Church becomes void by the Death of the Incumbent or otherwiſe, and the** Patron within the 6 Months brings a Quare Impedit againſt the Biſhop, and after 6 Months paſs without any Preſentment **by the Patron to the Biſhop, Lapſe ſhall incur to the Biſhop, notwithſtanding the Pendency of the Writ; for it is not Reaſon that the Ordinary ſhould loſe his Title of Lapſe without any Tort done by him, by a fraudulent Action of the Patron without Cauſe, by which the Ordinary ſhall be put to Expences without Cauſe; and by ſuch fraudulent Means the Patron may keep the Church perpetually void. Hobart's Reports 270.**

Hob. 197. pl. 250 Mich. 15 Jac. Brickhead v. Archbiſhop of York.—And there, pag. 201. Hobart Ch. J. puts another Caſe, viz. If a Church becomes void, and *A. the true Patron preſents* a Clerk, *and likewiſe J. S. a Stranger*, who has no Right, preſents another, In this Caſe the Biſhop, tho' he may receive either of them at his Peril, yet receives neither (as he may lawfully do) till the Right be inquir'd, without doing himſelf any Act of Diſturbance; in this Caſe if *A. brings* his *Quare Impedit againſt B. only*, the Biſhop may collate by Lapſe without Queſtion. *But* in that Caſe, *if A. names the Ordinary a Defendant*, together with the Diſturber, and then the Biſhop comes and pleads that he claims nothing but as Ordinary &c. and then the *Plaintiff hath* a *Writ to the Biſhop with a Ceſſet Executio* &c. and then recovers againſt the Diſturber, and the *Biſhop* in the mean Time *collates* by Lapſe; in that Caſe perhaps the Biſhop's Clerk may be removed, for it differs much from the former Caſe, for *here was a true and not a feigned Diſturbance*, whereunto the Ordinary gave Way ſo far, that the Plaintiff could not get his Clerk receiv'd, but was driven to his Quare Imp. For if he had proceeded to his Jure Patronatus without Quare Impedit, and the Time had incurr'd, the Biſhop might have preſented to Lapſe remedileſs; and therefore ſince he did his Endeavour to preſent, and was interrupted by a Stranger, and the Ordinary alſo refuſed his Clerk, for which he had rather have an Excuſe than a Juſtification, and now both being made Defendants, and the Plaintiff's Title is proved againſt them both, as if it had been ſo from the Beginning, it ſhould be hard that the Biſhop ſhould make Advantage of this Refuſal, which now appears to have been againſt Right and [he] the Party to the Suit. Hob. 201 Mich. 15 Jac. Brickhead v. Archbiſhop of York.——Ibid. in Marg. there is the following Note, (viz. That it is not ſo much the Preſentation of the Diſturber, as the Biſhop's Refuſal of the Patron's Clerk that preſents, which intitles him to the Quare Impedit; and therefore it is enough for a Biſhop to eſcape the Charge of a Diſturber, and not alſo to make Advantage of a Lapſe cauſed by himſelf.——If *Quare Impedit* is brought againſt the Biſhop *without any Preſentation* made to him, or *without naming any Diſturber* with him, or where *no Diſturbance was made*, in this Caſe tho' the Biſhop was Party to the Quare Impedit, yet he ſhan't loſe his Lapſe; for Fiction ſhall not take away Right. Jenk. 281. pl. 7.

2. **If a Man** recovers againſt J. S. in a Quare Impedit within the ſix Months, and Defendant brings **Writ of Error**, and Plaintiff ſues a Quare Incumbravit **againſt the Biſhop, and after the** 6 Months paſs, **yet no Lapſe ſhall incur to the Ordinary; for the Quare Incumbravit ſhall prevent it.** 17 E. 3. 75.

3. **If a Man brings a** Quare Impedit againſt Patron, Ordinary and Incumbent, **and the** Ordinary pleads that he claims nothing but as Ordinary, **and after the** Plaintiff recovers, **and the** Patron and Incumbent bring **Writ of** Error **in B. R.** pending which the Biſhop dies, **and another is made Biſhop, and after the** Incumbent takes a 2d Benefice, **by which**

which the firſt is void by the Statute of Pluralities, 6 Months paſs, and after the Judgment is affirm'd, no Lapſe ſhall incur to the Ordinary. P. 3 Ja. B. R. between *James and Bolton* adjudged, this Matter being returned by the new Biſhop upon the Writ to the Biſhop to him directed.

4. A Church is *void for a Year*, where a *Quare Impedit* was *brought within ſix Months againſt a Biſhop and a Diſturber*; neither the Metropolitan nor the King ſhall have any Lapſe; for the Biſhop being made a Party, has no Lapſe; and where the Biſhop ſhall not have a Lapſe, neither the Metropolitan nor the King ſhall have it. Jenk. 281. pl. 7. cites 1 Inſt. 344. b.

(Y. b) *Againſt what Perſon* being *Patron*, Lapſe ſhall incur.

Fol 367.

1. IF an Infant Patron does not preſent within ſix Months, Lapſe ſhall incur. 33 E. 3. Quare Impedit 46. Watſ. Comp. Inc 8vo. 186. cap 12. cites S. C

2. So Lapſe ſhall incur againſt a Feme Covert, if ſhe does not preſent within ſix Months. 33 E. 3. Quare Impedit. 46. F. N. B. 34 (T) S. P.

3. 17 E. 2. 8. Enacts that *Lapſe for ſix Months ſhall not prejudice the King's Preſentation to a Church.* If the *King permits a Lapſe*, the *Ordinary cannot preſent* by Lapſe, but *ſequeſter the Profits*, and find the Cure till the King will preſent. Br. Quare Impedit, pl. 90. cites 14 H. 7. 21.

4. If the *King has Preſentation in any other Right than in Right of the Crown*, Lapſe ſhall incur againſt him as well as againſt any other Perſon. But Brooke ſays Quære Legem inde, becauſe it ſeems Not. Br. Preſentation, pl. 56. cites the Regiſter, fol 31. Br. Quare Impedit, pl. 151. cites S. C and Anno 8 E. 3.

5. Where the *King's Tenant grants Proximam Præſentationem, and dies*; this ſhall hold Place againſt the King, and the Biſhop may preſent by Lapſe upon the King before Office found; but when Office is found, the King ſhall have the Preſentment, and the Incumbent ſhall be removed. Br. Preſentation, pl. 24. cites 14 H. 7. 21.

(Z. b) Lapſe. *To whom* it ſhall accrue [for a Collateral Reſpect.]

1. IF a Metropolitan Archbiſhop viſits an inferior Biſhop, and inhibits him during the Viſitation as uſual, and after during the Viſitation and Inhibition, and before any Releaſe made by the Archbiſhop, a Lapſe incurs to the Ordinary; tho' the Acts of Jurisdiction of the Ordinary are ſuſpended during the Viſitation, ſo that he cannot inſtitute his Clerk, yet he ſhall have Benefit of the Lapſe and not the Archbiſhop, but he ſhall collate to the Archbiſhop, and he ought to inſtitute his Clerk. Trin. 13 Car. B. R. between *Dodſon and Lyon.* Agreed by the Civilians in their Arguments. Watſ. Comp. Inc. 8vo. 194. cap. 12. cites S. C.

2. If a Biſhop dies, by which the Temporalties are in the Hands of the King, if during this Time Tempus Semeſtre paſſes, by which a Lapſe happens, the King ſhall have it, and not the Guardian of the Spiritualties. Bracton, lib. 5. fol. 404. S. 10. where in his Writ it is If the Lapſe incur, and then the *Ordinary dies*, the King

shall present, and not the Executors of the Ordinary; for it is rather an Administration than an Interest Hob. 154 cites F. N. B. 34. (G) 25 E. 3. 24.—The Master and Fellows of Merton College in Oxford, were Patrons of a Benefice within the Bishoprick of Durham; the Incumbent died; the Church remained void for 6 Months and more. The *Bishop was deprived.* It was a Question before the Chancellor of England, Whether the Collation belonged to the King or to the Archbishop of York, who was the Metropolitan or not. Quære. D. 87. b. pl. 103.——Ibid. Marg. cites 18 Eliz. as awarded that it belonged to the Guardian of the Spiritualties; and says it seems to be, because it comes by Reason of the Spiritualties; And says Quære if the Patron may now present, inasmuch as living the Bishop he might, notwithstanding the Lapse, present at any Time before the Collation.

is said, Cum vobis & universis de Regno Nostro Notorium sit, & esse debet, quod Ecclesiæ vacantes & pertinentes ad Collationem Episcoporum, Abbatum & Priorum Sede non vacante dum viverent, pertinere debent ad nos Ratione Custodiæ tempore Vacationis. (But it seems this intends Voidances, to which they have Right as Patrons.

Godolph. Rep. 244. cap. 22. S. 1. (i)—S. P. And the same Law of Metropolitan. Litchfield.——Cites 5 Rep 52. a.—Watf. Comp. Inc. 8vo. 196. cap. 12. cites S. C.—* S. P. Co. Litt. 344. b.

3. If the Patron presents, and his Clerk is Instituted, and remains without Induction 18 Months, no Lapse shall incur to the King; for the * King cannot have a Lapse but where the Ordinary might have had it before. Hobart's Reports 208.

Hob 154. Mich. 10 Jac. in Case of Colt and Glover v the Bishop of Coventry and

S.P. Br. Presentation, pl. 58.—S. P. Br. Plenarty, pl. 15. cites Doct. & Stud. lib. 2. 94.

4. If the *Patron* does not present within 6 *Months*, the *Ordinary* shall have other 6 *Months*, and if he does not present within this, the *Metropolitan* shall have other 6 *Months*, as it is said; and if they do not make Collation within this 6 *Months*, *the King* shall have it, as it is said. Br. Quare Impedit, pl. 53.

S. P. Because it is but a meer Trust in Law, and has no Relation to the

5. If a Lapse devolves to the Ordinary, and within those Months he is *translated* to another Bishoprick, Per Noy Attorney General, In Default of the Patron's presenting the *Warden of the Spiritualties* shall present, whosoever he be. Noy 69. Anon. Cites D. 87. pl. 103.

Temporalties, which go to the King. Watf. Comp. Inc. 8vo. 195. cap. 12. cites S. C.

(A. c) Lapse. In what Cases after Lapse incurr'd it shall be *taken away*.

* Br. Quare Impedit, pl. 53. cites S. C.—— S. P. Br. Quare Impedit, pl. 131. cites 13 E. 4. 3.

1. If Lapse incurs to the Ordinary, yet if the Patron presents before the Church is full, the Ordinary ought to receive his Clerk; for the Lapse to the Ordinary was, because upon Neglect of the Patron he ought to see the Church served, which is now performed by the Patron. * 11 H. 4. 80. 18 E. 3. 21. † 38 E. 3. 2. b. Adjudged 27 E. 3. 85. 18 H. 7. Kell. 50. ‡ Hobart's Reports 208.

——† Br. Presentation, pl. 51. cites S. C.—Br. Quare Impedit, pl. 64. cites S. C.——If the *Patron does not present within 6 Months*, the *Ordinary may make Collation within other 6 Months*; and *if he fail*, the *Metropolitan within other 6 Months*, and *in Default of him the King*; but during all this Time, if the Patron presents, the Church being void and the Lapse not taken, the Ordinary ought to admit his Clerk. Br. Presentation, pl 58.——S. P. Tho' it be two Years after the Advoidance. Brooke says, and from hence it seems, that *as long as the Church is void*, the *Patron* who is disturb'd *shall have Quare Impedit*; for Plenarty is no Plea, unless it be by 6 Months before the Writ purchas'd, as to him who pretends to be Patron; but *where the Bishop or Metropolitan makes Collation by Lapse*, the *Plenarty by one Day before the Presentment* of the Patron, is a good Plea. Br. Plenarty, pl. 15. cites Doct. & Stud. lib. 2. 94. S C——Lapse incurr'd *to the King*, and yet the Clerk of the right Patron is Admitted, Instituted and Inducted by the Metropolitan, whether this prejudices the King? D. 277. pl. 55. Trin. 10 Eliz. Anon.——‡ Hob. 152. 166.

2. But if the Ordinary collates by Lapse, and after and before Induction the * Patron presents, the Ordinary is not bound to receive him. D. 10 El. 277. 56. * Fol. 368.

3. If pending a Quare Impedit Lapse incurs to the Ordinary who is not named in the Writ, and the Plaintiff has Writ to the Bishop, at which time the Church is not full, yet if the Ordinary collates before the Receipt of the Writ, his Clerk shall not be removed. 11 H. 4. 80. Br. Quare Impedit, pl. 53. cites S. C.

4. If Lapse incurs to the Inferior Ordinary, and within his 6 Months after the Superior Ordinary collates, by which the Church is full, yet if the Patron presents his Clerk within those 6 Months, he ought to be received; For the Collation of the Metropolitan is tortious, and a Collation shall not put the Party to a Quare Impedit, and therefore this tortious Collation against the Patron is, as if no Collation had been. Dubitatur. 11 H. 4. 80. where it is objected, that the Tort is between the Ordinary and the Metropolitan, and not to the Patron. Br. Quare Impedit, pl. 53. cites S. C. — Watf. Comp. Inc. 8vo. 198. cap. 12 cites S. C.

5. If the Ordinary collates within the 6 Months, and after 6 Months pass, yet the Patron may present before a new Collation by the Ordinary; for the first Collation was by Tort, and therefore cannot become Rightful; and the first does not put the Patron to his Quare Impedit, because it was but a Provision for the Time, and therefore there ought to be a New Act before it shall be a good Collation.

6. If the Ordinary collates, and his Clerk is instituted and inducted within the 6 Months of the Lapse incurred to the Metropolitan, and after his 6 Months which he himself had are passed; though this Collation be tortious to the Metropolitan, yet it seems, that this shall take away the Presentation of the Patron so that he shall not present. Summer Vacation at the Assises in the County of Somerset, between *Sir Francis Popham* Plaintiff, *and the Bishop of Bath and Wells and his Son* Defendants in a Quare Impedit this was a Question, but so held by the Lord Finch, the Judge of the Assises; for there was a Right of Collation. And though his Time was passed, yet this rests only between him and the Metropolitan, and an Usurpation only to the Metropolitan. Watf Comp. Inc. 8vo. 199. cap. 12. cites S. C. — If the first 6 Months are passed, so that the Title to present is *devolved to the Archbishop*, or to the King if the *Bishop collates though the Right be passed*, and his Incumbent be in, the Patron by Quare Impedit shall not remove him; because his Possession is not taken away; for the Collation does not toll the Possession of a Patron, as a Presentment shall do, for by this the Wrong is done to the Metropolitan or the King, and not to the Patron. As if the *Archbishop presents within the 6 Months to the Bishop in the Place of the Bishop*, the Patron shall not have Quare Impedit thereupon, because the Church is full by one who does it *Jure Episcopali* as Officer, and by Colour of this; but if any *Stranger* who has no Colour presents, it is otherwise; for by this the shall be put out of Possession; Per Dyer and Walshe J. but Weston and the Serjeants contra in both Cases; for by presenting an Auter Temps they are Disturbers as any Stranger. Dal. 59. pl. 9. 6 Eliz. Anon.

The *Archbishop has a Title to collate by Lapse*; the *Bishop collates before him*, this shall bind the Archbishop; for at Common Law when a Clerk was once admitted, he was not removeable; and Collation *remains at Common Law*. West. 2. helps only in Case of Presentation. Jenk. 281 pl. 7.

(B. c) Lapse *to the King*. [In what Cases; And in what Cases taken away.]

1. VIDE in Case of the King when Lapse may be taken away Stamford's Prerogative, title Advowson. If the *King* has Title to present by Lapse, or by Outlawry, or Wardship, and does not present in his Turn, he shall lose it. Cro. J. 54. the King v. Bishop of Winton and Campion.

The Patron's Title continues againſt the Ordinary and the King till the Lapſe is executed. Hob. 152. in Caſe of Colt v. Glover.——But Doderidge J. ſaid, That the Patron cannot preſent againſt the King, becauſe he has the Lapſe not as Ordinary, but as Patron. Mo 900. in Caſe of Colt v. Glover.——Though the 6 Months paſs, yet if the *Patron preſents*, the Biſhop ought to admit, though it be *after Title devolved to the Metropolitan*; and this the Court held clearly; *And* they thought it ſeemed reaſonable alſo, that he ought to admit though Title by Lapſe be accrued *to the King*; For *he claims it as Supreme Ordinary*. Hutt. 24. in Caſe of Booton v. Biſhop of Rocheſter. ——Watſ. Comp. Inc. 8vo. 198. cap. 12. cites S C.—Palm. 311. Mich. 20 Jac. B. R. it was reſolved in the Caſe of **Thornton v. Savil**, that the Preſentation of the King by Lapſe is as ſupreme Patron, and not as ſupreme Ordinary, and the King is never ſaid to collate.——S. P. Cro. J. 651. in S. C. by Name of Sir George Savile v. Thornton.

2. **If Lapſe comes to the King for Default of the Ordinary and Metropolitan, if the** Patron preſents to the King before any Perſon is preſented by him, **yet the King is not bound to receive him; For the Preſentation being once ſettled in the King, ſhall not be deveſted. Dubitatur. D. 10 El. 277. 55.**

S. C. cited Roll. R 460. in Caſe of Colt v. Glover.—— Mo. 260. cites it as ſo adjudged in the Caſe of Rindleton v. Thornwell.——D. 277. Marg. pl. 55. S. P.——Gibb. 37. in the Houſe of Peers. The King v. the Archbiſhop of Armagh and Whaley.

3. **After a Lapſe incurred to the King for Default of the Ordinary and Metropolitan, if the** Patron preſents, and his Clerk is inducted, **yet this ſhall not toll the Lapſe from the King, but he may remove him by Quare Impedit. Co. 7. *Baskervill* 28. Admitted. 27 E. 3. 85. Adjudged. Dubitatur. D. 277. 55.**

The *Queen had a Title to preſent by Lapſe*, but before ſhe preſented a Clerk, the *Patron preſented E. who was* admitted, inſtituted and *inducted, and died.* The Queen has loſt her Preſentation, becauſe ſhe had Unam & Unicam Præſentationem hac Vice, which cannot extend to the ſecond Avoidance, otherwiſe ſhe may ſuffer one or more Strangers to preſent, and take her Turn when ſhe pleaſe; and the *Statute de Prerogativa* Regis, which enacts, that Nullum Tempus occurrit Regi, *muſt be intended* when the King has *an Intereſt permanent and certain*, and *not when* it is *ſpecially limited when and how he ſhall take and not otherwiſe*; For the Time is the Subſtance of his Title; and in ſuch Caſe Tempus Occurrit Regi. 7 Rep. 28. Trin. 27 Eliz. Baskervills Caſe.——Ibid. ſays the ſame was adjudged, Paſch. 28 Eliz. C. B. between Beverley and Cornwal.——S. P. Mo. 269. Beverley v. Cornwall.—— And. 148 S. C.—— S. P. Arg. Show. 425.

If the *Dean of the King's free Chapel does not give the Prebends within ſix Months*, the King ſhall give them. Br. Prerogative, pl. 129. cites F. N. B. fol. 33 ——*And* if the *Temporalities of a* Biſhop are in the *Hands of the King*, and Advowſon becomes void, and the Biſhop and Patron do not preſent within 6 Months, the King ſhall preſent as the Biſhop ſhould do if there was a Biſhop there. Ibid. ——Br. Quare Impedit, pl. 156. cites F. N. B. fol. 34. S. C.

4. **If Lapſe comes to the King** to preſent a Prebendary of his free Chapel, **becauſe the Dean thereof does not collate thereto within 6 Months, and after** before the King preſents the Dean collates, **yet the King ſhall have it, and ſhall remove the Clerk. 27 E. 3. 84. b. Adjudged.**

If the King has a Title to preſent by Lapſe, and the Patron preſents, yet the *King may preſent at any Time as long as that Preſentee is Incumbent* Cro. J. 216. Hill. 6 Jac. B. R. Cumber v. the Biſhop of Chicheſter and Green.

5. **If a Lapſe incurs to the King for Default of the Ordinary and Metropolitan, and after the** Ordinary collates, and his Clerk is inſtituted and inducted, **the which Clerk ſo** dies ſeiſed of the Church, **it ſeems the King may preſent, for the Lapſe devolved to him; For it ſeems the Church was never full, neither againſt the Patron nor againſt the King, in as much as the Collation of the Ordinary gains no Poſſeſſion againſt the King, but the King might have preſented without being put to his Quare Impedit; and it ſeems that the Church was not full againſt the Patron. (But Quære this.)**

6. When the Queen's Preſentee by Lapſe has *loſt the Incumbency by ill pleading*, which he may do as well as by Reſignation or Deprivation, yet the ſame ſhall not turn to the Advantage of the *Queen*; For where the Queen preſents for Lapſe, and her Clerk is inſtituted and inducted, ſhe has no more to do, but the *Incumbent muſt ſhift* as well as he can *for the holding of it*; For by what Manner ſoever he *loſes his Incumbency*, the

the *Queen ſhall not preſent again.* Otherwiſe if the Queen be Patron. Le. 194. Mich. 31 & 32 Eliz. C. B. Arundel v. Bp. of Glouceſter and Chaffin.

7. Quare Impedit; the Caſe was, after *Lapſe incurred to the Queen* the *Biſhop being Patron preſented*, and afterwards the *Succeſſor of the Biſhop certified, that this Incumbent had refuſed to pay the Tenths, and* that the Biſhop *collated the Defendant who was inducted*; the Queen brought a Quare Impedit, and it was adjudged, that the Queen had not loſt her Preſentation, but if the Incumbent had died it were otherwiſe; for here the Church became void by the *Incumbent's own Act*; ſo if he had reſigned or been deprived; and it would be inconvenient if the Queen ſhould loſe her Preſentment by the Incumbent's own Act. Cro. Eliz. 119, 120. Mich. 30 & 31 Eliz. B. R. the Queen v. the Biſhop of Lincoln and Ligh.

Mo 259. pl. 406. S. C. thus, The Biſhop being Patron and Ordinary collated D. In 8 Eliz. D. took another Benefice without Qualification, whereby the firſt avoided; but nothing was done thereupon till 18 Eliz. when C. Biſhop of Lincoln preſented again one E. but Non Conſtat, whether by Death, Avoidance, or Reſignation. Afterwards E. being in, C. was removed to Wincheſter. F. the Succeſſor Biſhop certified, that E. did not pay the Tenths, whereby the Church avoided, and thereupon F. collated Lee. The Queſtion was, If the Queen might now remove Lee, aud ſo have her Preſentment which accrued by Lapſe upon Avoidance of D. who took another Benefice without Plurality [Qualification]? In arguing this Caſe, the Caſe of **Kindleton v. Thornewell** was agreed, That if Lapſe is devolved to the Queen, and a *Stranger preſents, and the Incumbent dies*, the Queen ſhall not take the next Preſentation; But ſome ſaid, there was a Difference if the Incumbent * reſigns, becauſe Reſignation may be *by Covin* to defraud the Queen, As if Lapſe accrues to the Queen, and then the Patron preſents by Covin, that the Incumbent ſhall reſign, *and ſo Preſentment* ſhall *accrue to the Patron upon a new Avoidance, and the Queen be barred of her old Lapſe*, which is not reaſonabble. Others ſaid, That in ſuch Caſe the Covin ought to be averred; But they agreed, That *no Covin is intendable upon this Certificate; becauſe it is a Judicial Act*, which the Biſhop muſt make by Command of an Act of Parliament, as of Deprivation, which he muſt do by the Laws of the Church as Judge. And the Juſtices inclined againſt the Queen. Notwithſtanding which, it was afterwards adjudged for the Queen againſt the Biſhop.——S. C. Goldsb. 53. pl. 3. 78. pl. 10. 83 pl. 4. and 86. pl. 9. Judgment was given for the Queen.——Ow. 89. 90. S. C adjudged for the Queen.——4 Le. 95. pl. 195. S. C. adjudged.——* In the Caſe of **Cumber v. the Biſhop of Chicheſter and Green.** Cro. J. 216. pl. 2. Hill. 6 Jac. B. R. It was held, that by Death or Reſignation before the King in ſuch Caſe has preſented, his Preſentment was loſt, unleſs it be by Covin to take away his Title, in which Caſe he ſhall have his Preſentment. *But that if* the *Parſon* dies, or *reſigns* the firſt Benefice, *and the Patron preſents, and this Preſentee reſigns upon Covin* or dies, the King has loſt that Preſentment; for Lapſe is but Unica Proxima Vice.

8. *P.* was *Tenant for Life* of an Advowſon, *Remainder in Fee to A.*—*P. preſented* his Clerk, who was admitted, inſtituted and *inducted*; but by the Statute 13 Eliz. the Benefice was void for *want of reading the 39 Articles*; however, he *continued in the Church*, and by Reputation was Parſon during his Life; Afterwards *P. died*, and then the *Incumbent died*; then the *Queen* reciting her Title to preſent by Lapſe, *preſented* her Clerk, who was admitted, inſtituted and *inducted*; and *A. preſented* his Clerk who was admitted &c. *No Notice was* ever *given to P. of the* Avoidance for *Not Reading* &c. Adjudged, that the Queen's Preſentation was void, and that the other was good, though it was objected, that it belonged to the Executors of P. becauſe as to P. himſelf, the Church was full till Notice. Yelv. 7. Trin. 44 Eliz. B. R. Grendit v. Baker.

9. If a *Church* becomes *void by Acceptance of a 2d. Benefice* with Cure, and continues void ſeveral Years by Lapſe *in the Time of one King, who dies*, the *Succeſſor* of the King *may preſent*, and is not reſtrained by the Statute 25 *E.* 3. 1. For by the expreſs Words of the Statute, *All Rights and Titles to preſent in his own Time until before this Statute*, and *in his Time after, and all his Heirs, after the Death of E.* 3 *are ſaved*; And it ſhall not bar the Titles which the King had in another's Right fallen, or to fall in his own Time, or in the Time of his Heirs; And that there was ſuch a Saving appeared by the Copy out of the Parliament Roll, and by an ancient Book in the Exchequer wrote in Parchment, which has ſuch a Saving; Per all the Juſtices and Barons beſides Vernon. And they held, that the Words in the ſaid Statute (of *old Titles*) is intended in the Time of the Progenitors of E. 3. and not of any Titles of

Jo 334. S. C.——Het. 124. S. C.—Litt. Rep. 238. 302. S. C.

ot Preſentments to fall in the time of E. 3. or of any of his Heirs, but intended to exclude E. 3. and all his Heirs from Titles of Preſentation in others Right fallen before the Time of E. 3. whereof any Church was full, and which Title is only in Another's Right; and that the *expreſs Intent of that Statute was to take away the Statute of* 14 *E.* 3. *cap.* 2. *in this Point.* Cro. C. 354. Hill. 9 Car. in Cam. Scacc. The King v. Pryſt and the Archbiſhop of Canterbury.

(B. c. 2) In what Caſes Lapſe ſhall be to the King or Others; and *what may be done after.*

1. VIDE many Precedents, that by Determination of *Commendams Retinere*, be it by *Death*, *Reſignation*, *Tranſlation*, *or Promotion*, it belongs to the King to preſent. Noy. 138. —— And it is ſaid there, that there are infinite Numbers of ſuch Precedents.

2. In the Time of H. 3. there were in Com. Northampt. 2 *Rectories*, ſc. Maidwell and Kelmarſh, whereof there were 2 *Patrons*; Afterwards the Patron of M. in the Time of H. 3. purchaſed the Advowſon of K. and always after they were *come into one Hand* the Purchaſer *preſented only to the Church of M. cum Capella de K.* it as appears by the Biſhop's Regiſter. The Queen preſented B. who brought Bill in the Exchequer againſt the Incumbent of Maidwell, who occupied the Glebe of K. 'Twas decreed for B. that tho' the Patron of M. after his Purchaſe had preſented only to Maidwell, yet K. remain'd a Church in Right, and the Franktenement is in Suſpence and not in the Patron of M. as a Diſſeiſor. For Entry of the Patron in the Time of Vacation is no Tort nor gains any Franktenement. Per tot. Cur. Savil 17. pl. 46. Paſch. 22 Eliz. Lewis v. Predreth.

3. If after Alienation in *Mortmain* the Church voids, and the Abbot preſents and 6 Months paſs, the *Lord* at any Time within the Year may remove the Incumbent; for the Act of Parliament gives all this Time to the Lord to enter, and therefore when he *purſues the Statute* no Laches ſhall be imputed to him. D. 25. b. Marg. cites it adjudg'd. Mich. 19. Jac. C. B.

4. When a Lapſe is in the King he is not compellable to preſent, and *'till he preſents* the Ordinary has the Cure De Animis, and he ſhall provide for it; ſo the Difference is between the *Cura Animarum* and the *Patronage.* Per Doderidge J. Roll. R. 464. Trin. 14 Jac. in Cam-Scacc. in the Caſe of Colt v. Glover.

5. The King *can't grant over a* Preſentation which he has by Lapſe. Per Croke J. Roll. R. 467. in the Caſe of Colt v. Glover, cites D. 18 Eliz. 339. and 4 Eliz.

(B. c. 3) *Pleadings* in Caſe of Lapſe.

In Quare Impedit againſt W. and N. by the *King*, and *counted that T. was ſeiſed of the Manor and Advowſon, and preſented one P and from T. it deſcended to R. as Son and Heir, and that R. adher'd himſelf to the Enemies of the King in Scotland, by which he was outlaw'd; and the Church voided by Reſignation, and the King ſeiſed the Manor and Advowſon, and preſented* &c. and is diſturb'd. Chelre demanded

1. 25 *E.* 3. *Stat.* 3. *cap.* 7. ENACTS that *when the Ordinary preſents by Lapſe, and the King takes the Suit againſt the Patron, who in Deceit ſuffers the King to recover; In this Caſe, when the King's Right is not tried, the Ordinary or Incumbent may counterplead the King's Title.*

demanded Judgment of the Count; for it does *not appear if the King had Tenure of the Manor and Advowſon or Annum et Vaſtum* et non Allocatur. Chelre, Judgment of the Count; for it does *not appear if the Advowſon was appendant or not*, et non Allocatur. And after, *All except W. pleaded Ne diſturba pas*, and W. *the Incumbent pleaded, That the ſame R. who was outlaw'd, a long Time before the Outlarwry, leas'd the Manor and the Advowſon to J. S. for Life, the Remainder to T. in Fee, and A. preſented this ſame W. who was received and inſtituted*, Abſque hoc that R. had any Thing the Day of the Felony, or after, Priſt, Judgment if any Diſturbance, Priſt &c. The *King pleaded Eſtoppel, that it was found by Office, that R. was ſeiſed the Day of the Felony; And He in Remainder after the Death of A. travers'd the Office in this Point, and found againſt him*, Judgment if againſt this Matter found againſt the Patron he ſhall be received; and becauſe the *Statute does not give, that the Incumbent ſhall be received but where the Patron pleads faintly*; and when he traverſes, and it is found againſt him, this is not faintly, and ſo he and the Incumbent eſtopp'd; and becauſe that which is found againſt the Patron ſhall be try'd by the Incumbent again, and he claims by the Patron, therefore he ſhall be bound by that which binds the Patron; by which it was awarded, that the King have Writ to the Biſhop. Br. Quare Impedit, pl. 66, cites 38 E. 3. 31.

(C. c) *Uſurpation.* The *Effect.*

Fol. 369.

1. HE **who uſurps** gains the Fee **thereby.** 9 H. 6. 30. b. 31. Watſ. Comp. Inc. 8vo. 284. cap. 13, cites S. C.——— Uſurpation *gains* the Church, ſo that the Advowſon can't be granted over. Cro. E 811. in the Caſe of Leak v. the Biſhop of Coventry and Babington.——— S. P. Watſ Comp. Inc. 8vo. 222, cap. 13.

2. If an *Infant, ſeiſed of a Manor with Advowſon appendant, ſuffers Uſurpation*, and after he *makes Feoffment of the Manor cum Pertinentiis*, neither the Feoffee nor the Feoffor has any Remedy of the Uſurpation. Br. Preſentation, pl. 62, cites 16 E. 3. *So* if the *Tenant for Life*, the *Remainder over, ſuffers Uſurpation and dies*, he in Remainder is without Remedy of the Uſurpation. Ibid.

3. If I *grant Advowſon to a Parſon and his Succeſſors*, and the *Church voids*, and a *Stranger preſents* his *Clerk*, who *is inſtituted and inducted*, and the 6 *Months paſs*, he has loſt the Advowſon for ever; for the Parſon *cannot have Writ of Right, becauſe neither he nor any of his Predeceſſors were thereof ſeiſed*; and he can *not* have *Quare Impedit, becauſe the 6 Months are paſs'd*; and he can *not* have Aſſize of *Darrien Preſentment*, for *he never preſented*, and this Lacheſſe ſhall bind the Succeſſor for ever. Br. Preſentation, pl. 20, cites 19 H. 6. 40. Per Aſcue J. Quod non Negatur.

4. If the King *confirms the Patronage of* an Uſurper that has preſented ſeveral Times, and the ſeveral Clerks inducted, ſuch Confirmation is void, for the Uſurper has no Patronage; but if the King confirms the *Incumbent* 'tis good to the Incumbent, for he is Incumbent de facto, and the King can't remove him without Quare Impedit by the Stat. 25 *E.* 3. 13 *R.* 2. Jenk. 312, pl. 96.

5. If a Man preſent by Uſurpation to my Advowſon within 6 Months, I may have a *Quare Impedit*; but *after the 6 Months* if the Church become void, I can't preſent, but am put to my *Writ of Right* of Advowſon. And if a Man uſurps *on the King*, he is put to his Quare Impedit within the 6 Months, and that a double Uſurpation on the King puts him to his Writ of Right. Godb. 263. pl. 362. Mich. 13 Jac. C. B. Anon.

(C. c. 2) Uſurpation at *Common Law. How; And Remedied by Statute.*

† An Aſſiſe of Darrein Preſentment no Man can have without *alleging a Preſentment in his own Time.* 2 Inſt. 356.

1. 13 *Ed.* 1. *cap.* 5. WHEREAS *of Advowſons of Churches there be but three Original Writs; that is to ſay, one* Writ of Right *and two of Poſſeſſion, which be* † Darrein Preſentment *and* Quare Impedit.

It appears by this Statute, that every Preſentment which was admitted would put the very Patron out of Poſſeſſion at Common Law, and to his Writ of Right of Advowſon.

And hitherto it hath been uſed in the Realm, that when any having no Right to preſent, had * *preſented* † *to any Church, whoſe Clerk was* ‡ *admitted, he that was very Patron could not recover his Advowſon* || *but only by a* Writ of Right, *which ſhould be tried by Battail or by Great Aſſiſe; whereby Heirs within Age, by Fraud, or elſe by Negligence of their Wards, and Heirs both of Great and Mean Eſtate, by Negligence or Fraud of Tenants by the Courteſy, Women Tenants in Dower, or otherwiſe, for Term of Life, or for Years, or in Fee Tail, were many Times diſherited of their Advowſons, or at leaſt (which was the better for them) were driven to their Writ of Right; in which Caſe hitherto they were utterly diſherited.*

Br. Preſentation, pl. 46. —— Br. Plenarty, pl. 16. cites S. C. — By the Order of the *Common Law*, if *one* had preſented to a Church whereunto he *had no Right*, and the Biſhop had admitted and inſtituted his Clerk, this *Incumbent* could not be removed for divers Reaſons; 1ſt, for that he *came in* to the Church *by a judicial Act* from the Biſhop, (who the Law intended, Scrutatis Archivis, to do Right) the Incumbent *could not be removed* neither by Writ of Right of Advowſon, nor Aſſiſe of Darrein Preſentment, nor Quare Impedit, only the Patron ſhould recover his Advowſon in a Writ of Right of Advowſon, which by the Uſurpation was diveſted from him. 2dly, That by the Common Law, in every Town and Pariſh there ought to be Perſona Idonea, and this appeareth by the Words of the Writ of Quare Impedit &c. Quod permittat preſentare Idoneam Perſonam &c. And *when the Biſhop had admitted him Able*, which implied that he was Idonea Perſona, then the Law had its final Intention, viz. That the Church ſhould be ſufficiently provided for, and then *the Church was ſaid to be Plena* & Conſulta. 3dly, That the Incumbent having Curam Animarum might the more effectually and peaceably intend ſo great Charge the Common Law provided, That *after Inſtitution he ſhould not be ſubject to any Action*, to be removed at the Suit of any Common Perſon, without all Reſpect of Age, Coverture, Impriſonment, or Non ſane Memory, and without Regard of Title, either by Deſcent or Purchaſe, or of any Eſtate; wherein you may (as often it hath been ſaid) obſerve, what Inconveniencies follow when the right Inſtitution of the Common Law is not obſerved. 2 Inſt. 357.

* By this Word (*preſented*) it appeareth that no *Plenarty* doth put the Patron, that hath Title to preſent, out of Poſſeſſion, but only Plenarty *by Preſentation*; but Plenarty *by Collation* doth put him that had Right to collate out of Poſſeſſion. 2 Inſt. 357. —— S. P. 6 Rep. 30. in Green's Caſe. —— S. P. Cro. E. 207. Smallwood v. Biſhop of Coventry and Marſh.

See also Co. Litt. 344. b. 1. Leon. 226. Dal. 59. F. N. B. 31. I.

If *Tenant for Years* or *Guardian in Chivalry* bring a Quare Impedit, altho' the Defendant hath a Writ to the Biſhop againſt the Termor or Guardian, and his Clerk is admitted, inſtituted and inducted, notwithſtanding the Tenant of the Freehold of the Advowſon is not put out of Poſſeſſion. Note a Diverſity between a *Mere Uſurpation and* him that comes in by *Courſe of Law.* 2 Inſt. 357.

† This is intended of a Church *Preſentative.* 2 Inſt. 357.

‡ Albeit that *Admiſſus* in its proper Senſe is, When the Biſhop upon the Examination findeth him Able, (that is) Idonea Perſona, yet here it *is taken for Inſtitution*; for here is implied *ad eandem Eccleſiam*, and therefore of Neceſſity it muſt be here taken for Inſtitution, and the rather for that before Inſtitution the rightful Patron is not put out of Poſſeſſion. And it is to be obſerved, that by the Inſtitution *the Church*, as to all Common Perſons, *is Plena* & Conſulta *as to the Spiritualty*; that is to ſay, the Cure of Souls; for when the Biſhop doth inſtitute him, he ſaith, Inſtituo te ad tale Beneficium & habere Curam Animarum, &. accipe Curam tuam & meam; *but* before Induction the Parſon hath *not the Temporalties* belonging to his Rectory. 2 Inſt. 358.

But the Church is *not* full *againſt the King* before Induction, becauſe in the King's Caſe Plenarty is to be intended of a full and compleat Plenarty as well to the Temporalties as to the Spiritualties. And nota, preſent, [Preſentations] Admiſſions, Inſtitutions &c. are the Life of Advowſons; and therefore, if Patrons ſuſpect that the Regiſter of the Biſhop will be negligent in keeping of them, he may have a Certiorari to the Biſhop to certify them into the Chancery. 2 Inſt. 358.

|| This is to be underſtood where the Patron had a *Fee Simple*, and that he or ſome of his Anceſtors *had preſented*; *but if* the Patron claimed the Fee Simple of the Advowſon *by Purchaſe, and had never preſented*, there he could have no Writ of Right of Advowſon, but, before this Statute, had loſt the Advowſon; And likewiſe if Tenant in Tail or Tenant for Life had ſuffered any Uſurpation, they had been Remedileſs by the Common Law, becauſe they could have no Writ of Right. 2 Inſt. 358.— At Common Law *if Tenant for Life*, or *by the Courteſy*, or *in Dower*, or *the Guardian or* Tenant *in Tail*, had ſuffered Preſentment, thoſe *put him in Reverſion, or the Heir to his Writ of Right of Advowſon*; and *ſo* as to the *Feme, if the Baron had ſuffered Uſurpation*; and *ſo* if the *Biſhop, Archdeacon, Parſon*, and the like, had ſuffered

fered Uſurpation; and thoſe are remedy'd by this Statute, and that the Heir, or he in Reverſion, or the Feme or Succeſſor *ſhall have Quare Impedit at the next Avoidance.* Br. Preſentation, pl. 46. —— Br. Plenarty, pl. 16, cites S. C. —— S. P. 6 Rep. 50. Mich. 3 Jac. B. R. in Boſwell's Caſe.

If a *Biſhop*, *Abbot*, or Prior &c. *purchaſe* an Advowſon, *and ſuffer an Uſurpation* before they preſent, they and their Succeſſors are barr'd for ever, unleſs by force of this Act the Uſurpation be avoided in a Quare Impedit. 2 Inſt. 358. —— *So* if a Man *purchaſes* a Manor with the Advowſon appendant, *and ſuffers Uſurpation* at the firſt Avoidance, he is *without Remedy for ever*; for he cannot have Quare Impedit after the 6 Months, and he cannot have Writ of Right of Advowſon, becauſe he never had Poſſeſſion. Per Thorp. Nota. Br. Quare Impedit, pl. 29, cites 43 E. 3. 14. —— A Purchaſer is not within the Aid of this Statute; for he cannot have an Action Poſſeſſory, becauſe he cannot allege a Preſentation in himſelf as he ought to do in his Count; and he cannot have a * Writ of Right, becauſe he cannot allege Seiſin in the Eſplees as he ought to do by the Law. Per Doderidge J. 3 Bulſt. 40. Trin. 13 Jac. B. R. Harris v. Auſtin.— * S. P. But he may have a Quare Impedit, and *allege a Preſentation in him from whom he purchaſed* the ſame; and to that end, ſaith Britton, was the Quare Impedit provided, for Remedy of ſuch *Purchaſors*; but the Quare Impedit is *more ancient than the Time of E.* 1. as appeareth by Glanvile. 2 Inſt. 356. — In 8 E. 1. it appeareth Quod ſunt tria Brevia de Advocatione Placitabilia, Brevia de Recto, Quare Impedit, & Ultimæ Præſentationis, but yet the Original Writs of *Dower* and *Ceſſavit* &c. do lie of an Advowſon, and ſo doth the Judicial Writ of *Scire facias*. 2 Inſt 356.

* *It is provided, that ſuch Preſentments ſhall not be ſo prejudicial to the right Heirs,* † *or to them unto whom ſuch Advowſons ought to* ‡ *revert after the Death of any Perſons.*

* The Preamble extends only to Heirs in Ward, Per Fraudem & Negligentiam Cuſtodum &c. And the Words of the Body of the Act are, Quod hujuſmodi Præſentationes, (*ſuch Preſentations*) but theſe Words are to be *expounded*, Such Preſentations as be *in the ſame Miſchief*; and therefore this Act *extends to Heirs* of Advowſons, *tho'* they be *out of Ward*. 2 Inſt. 358.

And this being a Law that ſuppreſſeth Wrong and advanceth Right, doth *bind the King*, tho' he be not named in the Act. 2 Inſt. 359. —— The King being informed that he had Intereſt, preſented during Non-age of the Patron; and on another Avoidance, the Patron preſented, and the King brought Quare Impedit, and he pleaded as before; and it was held, that the Statute of Weſtminſter 2, does not aid the Defendant, tho' he be an Infant; for the *Statute mentions, Where* Uſurpation is had upon an Infant, Feme Covert, Termor, Tenant for Life, or the like, *by negligent Keeping*, that he ſhall have the ſame Action and Exception as their laſt Predeceſſor might have had; and *it is of Heirs who come in by Deſcent*, who may be in Ward, or have Actions as Heirs of their Anceſtor. *But* ** *Infant Purchaſor has no Guardian or Action Anceſtrel* of that which is purchaſed, and therefore Uſurpation had upon him now ſhall bind him, as *it ſhould have bound an Infant or Feme Covert at Common Law*, by the Opinion there, and this immediately within 6 Months; †† for the 6 Months is given by the Statute to bring the Quare Impedit to reform it. Br. Quare Impedit, pl. 18, cites 35 H. 6. 59. — ** S. P. 2 Inſt. 358. — †† S. P. Br. Preſentation, pl. 46. —— Br. Plenarty, pl. 16, cites S. C. —— And it was held, that if the Statute ſhall ſerve the Infant, yet the *King ſhall not be bound thereby*; for where by the ſame Statute Preſentment had and enjoy'd 6 Months by Laple ſhall bind, yet the King ſhall not be bound thereby, but ſhall have Quare Impedit after the 6 Months, by which the Defendant amended his Plea. Br. Quare Impedit, pl. 18, cites 35 H. 6. 59.

A *Prior* was ſeiſed of an Advowſon, and *granted the two next Preſentations to W. F. and his Heirs.* The Church voided. *W. preſented and died.* The Church voided again, and his *Son and Heir preſented where this is only a Chattle*; and it was agreed, that this is an Uſurpation, which put the Party to his Writ of Right of Advowſon at Common Law; but now this is expreſsly aided by this Statute. Br. Quare Impedit, pl. 14, cites 34 H. 6. 27.

† Nota (thoſe) hoc eſt illis heredibus, *to thoſe* Heirs that have the Reverſion of the Advowſon by Deſcent; for the Preamble ſaith, Hæredes etiam ſive majores, ſive minores &c. And the Percloſe of this Branch is, Qualem haberet ultimus Anteceſſor hujuſmodi hæredes &c. So as this Statute doth help the Heir of him *in the Reverſion*, and not the Leſſor himſelf; but the Heir of him in Remainder is not within the Purview of this Act. 2 Inſt. 359.

‡ That is of Tenant by the Courteſy, Tenant in Dower, or otherwiſe for Life, or for Years, or in Fee Tail. 2 Inſt. 359. —— Uſurpation had *upon Tenant in Tail ſhall bind himſelf for his Life*, but not the *Iſſue* in Tail; for he *is aided by the Statute.* Per Belk. Br. Quare Impedit, pl. 29, cites 43 E. 3. 14. —— If the Advowſon was *in Groſs*, then the Preſentments are but Uſurpations, and ſhall not Prejudice the Heir in Tail by Reaſon of the Statute. Br. Quare Impedit, pl. 31, cites 43 E. 3. 24.

The * *ſame ſhall be obſerved in Preſentments made unto Churches, being of the* † Inheritance of Wives, *what Time they ſhall be under the Power of their Husbands, which muſt be aided by this Statute by the Remedy aforeſaid.*

* If a Feme Covert hath an Advowſon *by Purchaſe*, ſhe is not within the Remedy of this Act. 2 Inſt. 360. — † This is intended of an Advowſon *by Deſcent.* 2 Inſt. 360.

Alſo Religious Men, *as Biſhops, Archdeacons, Parſons of Churches, and other Spiritual Men, ſhall be aided by this Statute, in Caſe any having no Right to preſent, do preſent unto Churches belonging to Prelacies, Spiritual Dignities,*

By this, Preſentation and Uſurpation in *Time of*

Vacation, albeit the Freehold *Dignities, Parſonages, or to Houſes of Religion, what Time ſuch Houſes, Prelacies, Spiritual Dignities, or Parſonages be vacant.*

and Inheritance is in Abeyance in Gremio Legis, yet the Uſurper gaineth a Fee-Simple in the Advowſon; like as if one entereth into Lands during the Vacation, and claim the ſame as his Inheritance, he gaineth an Inheritance by Wrong; but yet, as the dying ſeiſed of Lands in that Caſe during the Vacation ſhall not take away the Entry of the Succeſſor, no more ſhall the Uſurpation during the Vacation take away his Right of Preſentation when the Church becomes void; and if he be diſturbed, he ſhall have his Quare Impedit. 2 Inſt. 360. ——— See Supra. pag. 394, 395.

So great Regard the Law hath to *Judgments*, as this Act provideth, That by any

Sect. 2. *Neither ſhall this Act be ſo largely underſtood, That ſuch Perſons, for whoſe Remedy this Statute was ordained, ſhall have the Recovery aforeſaid,* Surmiling, *that Guardains of Heirs, Tenants in Tail, by the Courteſy, Tenants in Dower, for Term of Life, or for Years, or Husbands, which* faintly *have* defended *Pleas moved by them or againſt them.*

general Words of this Act they *ſhall not be avoided by Pretence of Faint Defence*; quia Judicia in Curia Regis reddita pro Veritate accipiuntur; & Judicia ſunt tanquam Juris dicta. 2 Inſt. 360.

Here is one of the Maxims of the Common Law; That,

Becauſe the Judgments *given in the King's Courts ſhall not be annull'd by this Statute, the Judgment* ſhall ſtand in his Force, until *it be* reverſed *in the Court of the King* as erroneous, *if Error be found.*

" Judicia in Curia Regis reddita non adnihilentur, ſed ſtent in ſuo Robore quouſque per Errorem, aut Attinctam adnullentur."

" Nihil tam conveniens eſt Naturali Æquitati unumquodq; diſſolvi eo ligamine, quo ligatum eſt."

" Intereſt Reipublicæ res judicatas non reſcindi." 2 Inſt. 360.

Or by *Aſſiſe of* Darrein Preſentment, or *by Inqueſt by a Writ of* Quare Impedit *if it be paſſed, or be annulled by Attaint or Certification, which ſhall be freely granted.*

* This Clauſe *extends* as well *to Strangers of Blood* as to Coparceners that are privy

*And ſometimes * when an* Agreement *is made between many claiming one Advowſon, and inrolled before the Juſtices in the Rolls or* by Fine *in this Form,* That one ſhall preſent the firſt Time, *and* at the next Avoidance another, *and the* third Time another; *and ſo of many, in Caſe there be many,*

in Blood; and if one of the Parties or his Heirs, or any Stranger uſurp in the Turn of another, the Party wrong'd is not driven to his Quare Impedit; for ſo it may be, that the Quare Impedit, or Aſſiſe of Preſentment, may fail, and yet he may have Remedy by this Branch of the Act; for albeit there be a Plenarty by 6 Months, yet the Party may have a Scire facias upon the Roll or Fine, and therein recover the Preſentation and Damages. 2 Inſt. 362.

See (G. a) (H. a) (K. a)

And when one has preſented, and had his Preſentation, which he ought to have according to the Form of their Agreement and Fine; and at the next Avoidance, he to whom the ſecond Preſentation belongeth is diſturbed by any *that was* Party to the ſaid Fine, or *by ſome* other in his Stead,

It is provided, That from henceforth they that be ſo diſturbed ſhall have no Need to ſue a Quare Impedit, but *ſhall* reſort to the *Roll or* Fine;

And if the ſaid Concord or Agreement be found in the Roll or Fine, then the Sheriff ſhall be commanded, that he give Knowledge unto the Diſturber, that he be ready at ſome ſhort Day, containing the Space of 15 *Days or* 3 *Weeks, (as the Place happeneth to be far or near) for to ſhew, if he can allege any Thing, wherefore the Party, that is diſturbed, ought not to preſent.*

And if he come not, or peradventure doth come and can allege nothing to bar the Party of his Preſentation, by reaſon of any Deed made, written ſince the Fine was made or inrolled, he ſhall recover his Preſentation with his Damages.

No Damages by this Act are to be recovered but *againſt* him that is Impeditor or *Diſturber.*

Sect. 3. *And if the* 6 *Months be not paſſed, but the* Preſentment *be* dereign'd within *the ſaid Time,* then Damages *ſhall be awarded* to the Half Year's Value *of the Church.*

And if the Diſturber have not whereof he may recompence Damages, in Caſe where the Biſhop conferreth by Lapſe of Time, he ſhall be puniſhed by two Years Impriſonment.

covered but *againſt* him that is Impeditor or *Diſturber*. 2 Inſt 363. —— In a Quare Impedit againſt the Patron and Incumbent, the *Plaintiff recovers the Advowſon Poſt ſemeſtre tempus*; and becauſe the *Incumbent* was Impeditor, for that he had *counterpleaded the Title of the Plaintiff*, therefore he recovered the *Value for two Years* as well *againſt the Incumbent* as the Patron. 2 Inſt. 363.

And if the Advowſon be dereign'd within the Half Year, *yet the Diſturber ſhall be puniſhed by the* Impriſonment of Half a Year.

2. 7 *Annæ, cap.* 18. *Foraſmuch as the Pleading in a Quare Impedit is found very difficult, whereby many Patrons are either defeated of their Rights of Preſentation or put to great Charge and Trouble to recover their Right, which is occaſioned by the Law as it now is; For Remedy whereof, be it enacted by the Queen's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, and by the Authority of the ſame, That no Uſurpation upon any Avoidance in any Church, Vicarage, or other Eccleſiaſtical Promotion, ſhall diſplace the Eſtate or Intereſt of any Perſon entitled to the Advowſon or Patronage thereof, or turn it to a Right; but he or ſhe that would have a Right if no Uſurpation had been, may preſent or maintain his or her Quare Impedit upon the next or any other Avoidance, (if diſturbed) notwithſtanding ſuch Uſurpation.*

(D. c) *Upon what Thing* Uſurpation may be.

1. IF a Donative becomes void, and after a Stranger preſents thereto, and his Clerk is admitted, inſtituted and inducted, yet this is not any uſurpation to the true Patron; But all this is merely void. Co. Litt. 344.

2. If the Ordinary deprives an Incumbent for Crime or other Cauſe in which he ought to give Notice thereof to the Patron, but he does not give Notice thereof to the Patron, but after a Stranger preſents his Clerk, who is inſtituted and inducted, and 6 Months paſs; it ſeems that this is an uſurpation upon the Patron; for tho' the Ordinary ſhall not have any Advantage of any Lapſe without Notice, yet the Church of itſelf is void, and againſt Strangers the Patron is bound to take Notice of it at his Peril. See Trin. 44 El. B. R. *Greene* and *Baker's* Caſe. Watſ. Comp. Inc. 8vo. 750, cap. 40. cites S. C. See the Statute of 7 Annæ, cap. 18. at (C. c. 2) Supra.

3. If my Clerk, being inſtituted and inducted, reſigns into the hands of the Ordinary by Covin between him, the Ordinary, and J. S. of Purpoſe that J. S. ſhall preſent J. D. to the Intent, to defeat me, the very Patron, of my Preſentation, and J. S. preſents J. D. accordingly, and 6 Months paſs, yet this ſhall not be any uſurpation, becauſe the Ordinary hath not given to me any Notice of the Reſignation; for otherwiſe every one may be defrauded by ſuch Covenous Dealing. Tr. 40 El. B. between *Lacon* and the *Biſhop of Lincoln*. Per Curiam.

(E. c) Uſurpation. *What Act* or Thing will make an Uſurpation, or put a Man out of Poſſeſſion.

1. IF a Man recovers in a Quare Impedit, and has Execution, every other is out of Poſſeſſion thereby. 9 H. 6. 57. Br. Quare Impedit, pl. 7. cites S. C.

Br. Quare Impedit. pl. 6. cites S.C.-- *Recovery against a Stranger, or* against *the Incumbent the Patron not named*, shall not bind the Patron; quod nota. Br. Quare Impedit. pl. 47. cites 7 H. 4. 25. 37. ——— And Brooke says it appears elsewhere, that where the *King or* the *Pope presents* the Quare Impedit shall be against the Incumbent alone, and in other Cases it shall be more commonly against the Patron and Incumbent, or against the Patron alone, unless in Special Cases. Br. Quare Impedit. pl. 47.

2. **If a Man brings** Quare Impedit against the Incumbent only **without the Patron** and Recovers, and by Writ to the Bishop the Incumbent is removed, and the Clerk of the Recoveror instituted, **this shall put the Patron out of Possession tho' he was no Party to the Suit. Dubitatur.** 9. H. 6. 32.

3. **If the** Bishop be a Disturber, **no Lapse shall incur by his Disturbance, tho' the Church be void by** 6 **Months. Tr.** 3. **Ja. B. R. between** *Palmer and Smith.* **Resolved per Curiam.**

4. As it the Patron present **to the** Bishop, **and he** will not examine the Clerk but delays him, by which the 6 Months pass, **yet no Lapse shall incur to the Bishop; Because he is a Disturber, and this comes by his own Disturbance. Tr.** 3. **Ja. B. R. between** *Palmer and Smith.* **Resolved per Curiam.**

5. **If a** Stranger presents **to my Church being void without any Right or Title, but** merely by Tort, **but he presents** by Simony, **and** his Clerk is **admitted, instituted, and** inducted, and 6 Months pass, **yet this is not any usurpation to me; Because the Presentation, Admission, and Institution are made void by the Statute of** 31 El. **and the Presentee is** not Incumbent de Facto. **Co. Litt.** 120.

6. If I *present my Clerk, who is admitted*, and after *another presents and ousts my Presentee without Title*, Now, notwithstanding that *Presentee will not sue Spoliation*, yet *I am not out of Possession, but after the Death of my Presentee I shall present again.* Br. Consultation. pl. 1. cites 44 E. 3. 33. Per Tank.

7. In Scire facias it was agreed, That if the *King seises Advowson of a prior Alien for War and Presents*, and after the *Prior is restored*, this does not put the Prior out of Possession, nor shall the Presentment of the Guardian in Chivalry put the Heir out of Possession; For the *Possession of the King affirms the Title of the Prior* Alien, and of the Heir; *But* the Heir nor the Prior Alien, *shall not make Title by this Presentation of the King.* Br. Presentation pl. 47. cites 46 E. 3. 6.

8. Where the Defendant *presents in Jure Uxoris*, yet if *she has no Right* this does not vest Possession in him. Br. Quare Impedit. pl. 108. cites 14 H. 6. 23.

9. Between Patrons, if one of them be presented and admitted, and *instituted by the Ordinary, and is in by* 6 *Months*, this shall gain Possession; *Contra where he presents a Clerk, and puts him in Possession without the Ordinary*; *As* where I have a *Free Chapel*, to which I may make Collation, and put my Clerk in my self without presenting to the Bishop, there if a Man at an Avoidance puts in his Clerk who is in by 6 Months, this does not put me out of Possession, nor if he presents him to the Ordinary, who admits and institutes him. So where an Abbot is *Elective, and not presentable*, there *Presentation does not gain Possession*, Per Markham, quod Danby concessit; but *Newton* held *Contra*, and that in those Cases of Presentation to the Bishop, where the Clerk is admitted and instituted, he is a clear Gainer of Possession; otherwise it seems clearly to be, where he puts him in Possession of his own Authority, by which he continues till the 6 Months pass; this does not gain Possession clearly as it seems, Contra of the Bishop who makes Collation by Lapse; For there 6 Months make Possession. Br. Quare Impedit. pl. 83. cites 22 H. 6. 25.

10. A *Prior* was seised of an Advowson, and *granted the 2 next Presentations to W. F. and his Heir*, the Church voided, *W. presented and died*, the Church voided again, and *his Son and Heir presented, whereas it is only a Chattle*; And it was agreed that this is a Usurpation which puts the Party

It was resolved, That if *Tenant in Tail* of a Manor with

to

to his Writ of Right of Advowſon by the Common Law, but now this is expreſly aided by the Statute of *W.* 2. That Uſurpations permitted by Termors ſhall not grieve him in the Reverſion, by which at the next Avoidance the Prior preſented, and Iſſue was taken by the other, That the Prior did not grant Modo & Forma &c. and would not ſtay the Matter in Law. Br. Quare Impedit. pl. 14. cites 34 H. 6. 27.

an Advowſon appurtenant *grants the next Avoidance, and dies*, and the Iſſue enters into the Manor, then the Grant is void, as it ſeemed by 3 Rep. 81. And altho' ſuch *Grantee preſents* by Colour of ſuch Grant, yet that is a Uſurpation which ſhall bind. Noy. 143. Anon.

11. By the *Poſſeſſion of the King* by Preſentation, *or* by the Poſſeſſion *of any other Perſon by Preſentation*, every other is out of Poſſeſſion. Br. Quare Impedit. pl. 18. cites 35 H. 6. 59.

No Preſentation ſhall gain Poſſeſſion, *but that which is* a perfect Preſentation, *and where the Incumbent continues by 6 Months*; For 10 Preſentments within 6 Months ſhall not gain Poſſeſſion. Br. Quare Impedit. pl. 149. cites 12 H. 8. 12.——S. P. if all the Clerks die within the 6 Months. Br. Preſentation pl. 23. cites 14 H. 8. 2.

12. He who *preſents himſelf by a ſtrange Name*, where he is Patron and takes, he ſhall be put out for Spoliation; For he may *pray the Ordinary to admit him*, but not preſent himſelf. Br. Quare Impedit. pl. 18. cites 35 H. 6. 59.

If J. N. *pray the Ordinary to admit him, which he does*, this does not gain Poſſeſſion; For there is *no Preſentation*; For he cannot plead Plenarty of his own Preſentment.——Br. Preſentation, pl. 23. cites 14 H. 8. 2.——Br. Quare Impedit. pl. 86. cites 14 H. 8. 2. 29.

13. If a Church becomes void, to which *I have Cauſe to preſent*, and a *Stranger makes Preſentation*, and his Clerk is inſtituted and inducted, againſt whom a *Stranger brings Quare Impedit, and recovers*, this Recovery ſhall not grieve me who am rightful Patron, and a Stranger to this Recovery &c. Agreed per tot. Cur. Keilw. 49 pl. 4. 18 H. 7.

14. If *a Stranger preſents the very Patron*, this will not put him out of Poſſeſſion. Br. Preſentation pl. 23. cites 14 H. 8. 2.

15. If the *Ordinary makes Collation within 6 Months*, this does not gain Poſſeſſion to the Succeſſor; *For he has Colour* as Ordinary; *Contra, where he* preſents *without Colour*. Note the Diverſity. Br. Preſentation pl. 23. cites 14 H. 8. 2.

Collation with Admiſſion ſhall not ouſt the Patron of his Poſſeſſion; *But Preſentation with Admiſſion* gains Poſſeſſion. Per Conisby and Fineux Ch. J. accordingly Ibid

16. If a Man *preſents himſelf*, and is inducted, and dies, this does not toll the Action of the very Patron; But he may have Quare Impedit, and this does not gain Poſſeſſion. Br. Preſentation pl. 23 cites 14 H. 8. 2.

So it is of the *Collation*. Ibid.

17. A *College* was *founded by the Name of Aulæ Scholarium* Reginæ de Oxon. The *Provoſt* of the ſaid College *preſented* to a Church being void *by Name of* the *Provoſt* of the College of the Queen in Oxon, *and omitted the Word (Scholarium)* And it was *held* clearly by the Court, that this Preſentation thus made, by a contrary Name of their Foundation, ſhall make *no Uſurpation*, nor gain any Patronage to themſelves; for there was no ſuch Name of Incorporation as they preſented by, and ſo conſequently no Uſurpation thereby by them gained. Bulſt. 91. Mich. 8 Jac. Dr. Ayray v Sir Richard Lovelace.

18. It was held by Brampſton and Crooke J. that a Naked *Preſentment without* any *Induction*, does not gain any Right, and the very Patron by this is not put out of Poſſeſſion, but that it is the Inſtitution and Admiſſion by the Ordinary, which is a Judicial Act, that makes the Uſurpation, and there is not any Intereſt gained before; for if there be a Preſentation without Inſtitution, nothing is done, therefore if the Uſurpation is gained by the Inſtitution, which is ſubſequent to the Preſentation, the Uſurper in his Declaration cannot ſay that he was ſeiſed in Fee and preſented, which is precedent to the Act which makes the Uſurpation,

Uſurpation, viz. the Inſtitution, And till Inſtitution no Eſtate is drawn out of the Uſurpation; that if after Preſentation and before Inſtitution, the very Patron grants his Advowſon to a Stranger, the Grant is good, tho' afterwards there be Inſtitution of the Clerk of the Uſurper. And they ſaid that in Truth there cannot be an Uſurpation to gain the Fee till the Inſtitution, and *by Relation*, which is a Fiction in Law, it ſhall not be ſo taken; for Relation and Fiction is to preſerve, and to prevent Miſchief, and not to do a Tort, as the Caſe in Queſtion is. But Barkley and Jones held, That the Preſentation is the ſole Act of the Party which gains the Advowſon, and the Inſtitution is only a ſucceeding Ceremony; and when the Ceremony is perform'd, it ſhall have Relation to the precedent Act; and cited 6 E. 3. 41. b. that Preſentation in Time of War, and Inſtitution in Time of Peace, ſhall be an Uſurpation in Time of War. Et ſic pendet. Jo. 427. 428. Hill. 15 Car. B. R. in Caſe of Sir Henry Harper v. The Bailiffs and Burgeſſes of Derby.

(F. c) Uſurpation. *For whom* the Uſurpation ſhall be ſaid to be.

Watſ. Comp. Inc. 8vo. 207. cap. 13. cites Same Caſes.

1. IF the King preſents in Right of his Ward, who has not any Right to the Advowſon, this veſts the Inheritance in the Ward by Uſurpation, becauſe he has expreſsly preſented in his Right. 42 E. 3. 4. b. 43 E. 3. 14. b. Contra 22 E. 4. 9. b.

2. So it is of a Common Guardian. Contra 17 E. 3. 60. 7 H. 4. 26. b.

Watſ. Comp. Inc. 8vo. 207. cap. 13. cites S. C.

3. If I preſent as Procurator to J. S. to a Church of which J. N. is ſeiſed; this ſhall be an Uſurpation for J. S. if I am Procurator of J. S. 17 E. 3. 60.

4. So it ſhall be if I preſent as his Procurator, tho' I be not his Procurator. 17 E. 3. 60.

Watſ. Comp. Inc. 8vo. 207. cites S. C. — S. P. Admitted per Cur. Ow. 142.

5. So if I my ſelf am ſeiſed of an Advowſon, and I preſent as Procurator to a Stranger, this ſhall be an Uſurpation upon my ſelf for the Stranger. 17 E. 3. 60.

in C. B. 42 Eliz. in the Caſe of Rudd v. Topſey. And upon the Reaſon thereof the principal Caſe there was ruled, viz. In a Quare Impedit, the Jury found that Edward Capell was ſeiſed of an Advowſon in Fee, and did let it to the Defendant for Years, and during the Leaſe he preſented the Defendant; and the Doubt was, Whether this was a Surrender or an Extinguiſhment. And it was held by all the Juſtices, That this could not be a Surrender, but is clearly an Extinguiſhment.

S. P. Co. Litt. 52. a. This is a putting myſelf out of Poſſeſſion, becauſe the Patentee comes in by the Inſtitution and Induction of the Ordinary.

6 So ſhall it be, if I preſent as Attorney to a Stranger of an Advowſon whereof I my ſelf am ſeiſed, this ſhall be an Uſurpation for the Stranger. 17 E. 3. 60. b.

(G. c) Uſurpation. *What Perſon* [may] uſurp. The *King*.

S. P. By all the Juſtices, except Windham J. For true it is that the King cannot do Wrong to any; but that which makes the Tort, and cauſes the Uſurpation, is the Inſtitution

1. THE King may uſurp 42 E. 3. 4. b. 43 E. 3. 15. D. 18 El. 351. 22. and cites Trin. 35 H. 8. The King may gain an Advowſon by Preſentment, and Plenarty by ſix Months without any Title. Alſo againſt an Infant Purchaſer.

ſtitution and Induction, which is not properly Tort, becauſe they are Judicial Acts. Sid. 163. Brown v. Spence.

In Quare Impedit by the *King*, who *counted that he himſelf was ſeiſed* of the Advowſon, *and preſented* his Clerk &c. *who was Inſtituted* &c. and after died, and he preſented again, and the Defendant diſturb'd him, the *Defendant ſaid, That before the King preſented, or any Thing had, J. S. was ſeiſed* &c. *and preſented, and his Clerk inſtituted and inducted, and convey'd* the Advowſon *to himſelf by Grant of J. F. and after the Church voided, and W. S. inform'd the King that he had Intereſt*, by which the King preſented, and his Clerk was received and inſtituted &c. *and after the Church voided again, and the Defendant preſented, by Reaſon that he was within Age at the Time of the Preſentation of the King abſque hoc, that the King had other Title but by the Information.* And it was held that the King was in Poſſeſſion by Reaſon of his Preſentation; and therefore ſee that the King may be an Uſurper. Br. Quare Impedit, pl. 18. cites 35 H. 6. 59.——Br. Prerog. pl. 6. cites S. C.

For whom.

2. **If the King** preſents in Right of his Ward, who has not any Right **to the Advowſon, this veſts the Inheritance in the Ward; for he has expreſsly preſented in his Right, and is an Uſurpation. Ergo** 42 E. 3. 4. b. 43 E. 3. 14. b. **Contra** 22 E. 4. 9. b. See (F. c) pl. 1. 2.

3. So **ſhall it be in Caſe of a** Common Guardian. **Contra** 7 H. 4. 26. b. 17 E. 3. 60.

(H. c) *Who* may uſurp *in Reſpect of the Eſtate.*

Fol. 371.

1. **IF a Man ſeiſed of an Advowſon in Fee,** grants the three next Avoidances **of the Church to J. S. and after the Church voids, and the** Grantor himſelf preſents, and his Clerk Inſtituted and Inducted, **tho' the Grantor himſelf has the Fee, ſo that he cannot gain a new Fee by an Uſurpation, yet this ſhall be an Uſurpation as to the Grantee, by which the two other next Avoidances to him granted are turned to a Right; and ſo becauſe he cannot have a Writ of Right, he is without Remedy for them. M. 16 Ja. B. between Sir *William Ellwayes and Tailor*. Per Curiam. Intratur. Contra. Co. Litt. 249. there cites H. 18 El. B. Per Curiam, for the** Privity **between them [makes it] no Uſurpation, and becauſe he cannot uſurp upon himſelf.** Hob. 315. S. C.—— The Grant of the three Avoidances is all one intire Intereſt, and he cannot have Writ of Right by Reaſon of the Feebleneſs of his Eſtate, and this Uſurpation is not remedied by the Statute of W. 2. 5. And ſo his Right being remedyleſs, it is gone, and he in Reverſion is ſeiſed in Fee diſcharg'd of this Grant, and having uſurp'd within the 6 Months, the Intereſt does not continue divided in him; and if he dies, his Executor ſhall not have it but his Heir, for it is drown'd in the Reverſion; as if Tenant for Life be diſſeis'd by him in Reverſion, and dies ſeis'd, this is a Deſcent of the Eſtate in Fee, and ſo the Reverſioner is ſeis'd in Fee of the Advowſon. Adjudged accordingly. But Hutton Contra; for he held that they were 3 ſeveral Intereſts, as if 3 ſeveral Grants had been made. Jo. 6. pl. 4. S. C.

2. But **P. 12 Car. B. between *Legg and Sir Anthony Ager* in Ejectione firmæ, adjudged per Curiam, that if** Leſſor **of an Advowſon** uſurps upon his Leſſee for Years, **that this ſhall not ouſt the Leſſee of the next Turn, becauſe Leſſor cannot make any Uſurpation upon himſelf for the Privity between them; and therefore this Preſentation upon the Leſſee only bars the Leſſee for this Turn only, and his Eſtate not turned to a Right; and in this Caſe they denied the ſaid Caſe of Sir *William Elkwayes and Tailour* to be Law.** See Co. Litt. 249. a. and at the End of pl. 1. next above.

(H. c. 2) *Who* ſhall be *ſaid* to be the *Uſurper*.

1. IF a Head of a Corporation, by a *wrong Name of Incorporation*, preſents a Clerk, who is Admitted, Inſtituted and Inducted; the Party who is preſented ſhall not by the Preſentment be the Uſurper, becauſe the Preſentment as to him (being by a void Name of Incorporation) is void in itſelf, and he by this gains nothing at all (the Preſentation of him being by a contrary Name differing from the Name of the Foundation;) but this *Collation* here by the Biſhop ſhall make Him to be the Uſurper. Per tot. Cur. 1 Bulſt. 91. Mich. 8 Jac. Dr. Ayray v. Sir Richard Lovelas.

See (B. c)

(I. c) Uſurpation. Upon whom. Upon the King. [*Or others.*]

For the Advowſon was always appendant, and the Inheritance paſſes to the Grantee, and is not made diſappendant, as in Caſe of a common Perſon; for the King cannot be put out of Poſſeſſion; but the Patentee ſhall not have Quare Impedit of the firſt Diſturbance; for that Preſentment, being a Choſe en Action, doth not paſs unleſs mentioned in his Grant. And if the *Patentee* brings Quare Impedit on the 2d Advoidance, he *ſhall make his Title by* the Preſentment of the King not making Mention of the Uſurpation. 3 Le. 17. pl. 41. Mich. 14 Eliz. Anon.——3 Le. 61. pl. 89. Mich. 18 Eliz. C. B. the S. C. in the ſame Words.——Dal. 75. pl. 1. Anno 14 Eliz. S. C.—* Hob. 242.

1. IF the King be ſeiſed of a Manor to which an Advowſon is appendant, the Church becomes void, and a Stranger uſurps; this is not any Uſurpation as to the Inheritance; for the King may grant the Manor with the Advowſon appendant, and the Patentee ſhall preſent to the Avoidance. * Hobart's Reports 189.

2. But a Man may uſurp upon the Queen; For the Plenarty &c. is good Plea againſt her. 18 E. 3. 2. Adjudged. But there Quære.

3. This Uſurpation is only to the Preſentment.

A Man may uſurp upon the King, if his Clerk be received, as well as upon a common Perſon; Quod Nota; and this puts the King out of Poſſeſſion. Br. Quare Impedit, pl. 39. cites Fitzh. Quare Impedit 15. and 18 E. 3. 15.——*But* Brooke ſays it is ſaid elſewhere, that Lapſe ſhall not hold Place againſt the King; for Nullum Tempus Occurrit Regi; and from hence it ſeems that the King may have Quare Impedit after the 6 Months, if *the Church* be void, but if it be *full by Preſentation, and no Patron nor Incumbent alive who may be ſaid Diſturber, againſt whom the King may recover, the King is put to his Writ of Right* of Advowſon; Contra it ſeems where they are alive; for Plenarty is no Plea againſt the King. Per Cand. but Belk. contra.

4. A Man may uſurp upon the King, and put him to his Writ of Right. 18 E. 3. 16.

In Quare Impedit it is admitted, that *two Preſentations* ſhall put the King out of Poſſeſſion, and *put him to his Writ of Right* of Advowſon. Br. Preſentation, pl. 9. cites 47 E. 3. 4.——And ſays, ſee 24 E. 3. 37. That the King ſhall have Quare Impedit or Writ of Right of Advowſon, and ſome other Actions. And Brooke ſays, from hence it ſeems that the King may be out of Poſſeſſion Ibid.—— Br. Prerogative, pl. 9 cites S C.——Br. Quare Impedit, pl. 39. cites S. C. and 21 E. 3. accordingly ——S. P. Br. Prerogative, pl. 110. cites 41 E. 3. 10.——Vaughan Ch. J. ſaid, That the Reaſon why *two Uſurpations put the King out of Poſſeſſion* is, that after the Death of the firſt Incumbent there is none againſt whom he may bring his Action. 2 Jo. 10. in Caſe of the King v. Jervice, cites Staml. Prer. 39. 54. 62.——But ſee pl 5.

* S. C. adjudged in C. B. againſt the Opinion of Anderſon Ch. J. there, that the King is put to his Writ of

5 A Man cannot uſurp upon the King for the Inheritance and put him to his Writ of Right though he preſents twice. P. 13 Ja. B.* Contra adjudged between the *King* Plaintiff, *and the Biſhop of Winchester and Matthews* Defendants. D. 18 El. 351. 22. D. 28 H. 8. 24. 153. Co. 6. *Greene* 30. cites P. 25 El. B. Intratur. M. 21, 2. El. Rot. 2218. between † *Peſcod and Yardley.* Adjudged, that double or treble Uſurpation by ſeveral Perſons does not gain the Inheritance

heritance of the Advowſon out of the King; for it is permanent, and is not deveſted thereby.

Right. But Error being brought in B. R. this Judgment was reverſed, by the Opinion of Popham Ch. J. Yelverton, Williams, and Tanfield, Fenner being e contra; and they alleged two Reaſons, 1ſt. The Right of Patronage, and the Advowſon itſelf being an Inheritance in the Crown of Record, the Law ſo protects it, that by no Tort done by a Subject it can be diveſted; For in Caſe of the King there ought to be the ſame Means to diveſt it out of the King, (viz. a Record) as there is to intitle him, and here is no Matter of Record againſt the King; For the Preſentation by a Subject is only Matter in Fact, which Act, though it is mixed with the judicial Act of the Biſhop, yet it ſhall not prejudice the King, in as much as it is grounded only upon the Tort of the Subject. 2dly, No Man can ſhew when and at what Time the Uſurpation upon the King commences; For there is no Doubt, but after the 6 Months paſſed from the Incumbency he may well preſent; for Plenarty is no Plea againſt the King, & Nullum Tempus Occurrit Regi, and after ſuch Uſurpation upon the King, there is no doubt per Cur. but that the Patronage is yet in the King to grant. And they all held, that during the Life of the firſt Preſentee, there is no doubt but that the King may preſent, and then the Death of the Incumbent cannot make that an Uſurpation which was not ſo in his Life; for his Death is a Determination of the firſt Tort, which will rather aid than hurt the King. And per Tanfield, according to this Reſolution it was reſolved alſo 23 & 24 Eliz C B. in one **Bardley's** Caſe, though in that Caſe there was not any Induction, which was the Reaſon that the Opinion of the Judges was not delivered in Point of Judgment, but all were of Opinion as they in this Court now are; and no Book in the Law is contra, but only a glancing Opinion in 43 E. 3. 19 E. 3. and 18 E. 3. Yelv. 90, 91. Trin. 4 Jac. B. R. the King v. Matthew ——Noy. 18. S. C. † Mo. 338. S. C. accordingly, by Name of Yardley v. Preſtwood.——— And. 81. pl. 147. S. C. accordingly.——— Cro. J. 123. S. C. accordingly, by Name of the King v. Champion.

Quare Impedit by the King, the *Defendant pleaded, that the Church was full the Day of the Writ purchaſed* &c. and ‡ his Counſel demanded Judgment of the Writ; Et non Allocatur againſt the King. And there it is agreed in a Manner, that Plenarty is no Plea againſt the King claiming in his own Right, or in another's Right, by which the *Defendant alleged two Preſentments in his Anceſtor one after another, to prove Uſurpation to put the King out of Poſſeſſion.* And per Belknap clearly, this ſhall not ſerve againſt the King, by which Candiſh dared not demur, but traverſed the Preſentment of the King. Br. Plenarty pl. 1. cites 43 E. 3. 14———Uſurpation upon the King does not gain Poſſeſſion. Br. Quare Impedit, pl. 28. cites S. C. But Brooke ſays, Quære inde——— ‡ Orig. is (Counſel de luy in Judgment &c.)

In a ſpecial Verdict in Treſpaſs, it was adjudged, That an *Uſurpation on the King's Title* by Preſentation will put him out of Poſſeſſion, and he *is put to his Quare Impedit*, and cannot preſent, till the Incumbent is removed by Judgment. * *But* double or treble Uſurpations by ſeveral Perſons ſhall *not gain the Inheritance* of the Advowſon *out of the King*; for that is permanent, and cannot be deveſted. Whereas, as to Preſentation, the King may be put out of Poſſeſſion, becauſe that is tranſitory. Adjudged 6 Rep. 30. a. Trin. 44 Eliz. B. R. Green's Caſe.——S. P. determined on a Writ of Error. Cro. J. 123. the **King v. Champion**, with this further Reaſon, That the King is put to his Action of Quare Impedit, becauſe Reaſon requires that the Church ſhould be ſerved ——Cro. J. 385. the King v. the Biſhop of Norwich. S. P. adjudged.——* Cro. El. 519. in Huſſey's Caſe. S. P.

6. **The** Patentee **of the King of an Advowſon** preſents twice **to the Church**, and his Clerk is inſtituted and inducted where the Patent was void in Law, and * it did not paſs by the Patent, **yet the Patentee has ſo gained the Poſſeſſion of the Advowſon by this Uſurpation againſt all** Strangers, **that at the next Avoidance, if he be diſturbed,** he may maintain againſt a Stranger, who makes no Title thereto, an Aſſiſe of Darrein Preſentment. **D.** 18 **El.** 351. 22. **Adjudged.**

* Fol. 372.

7. **An Uſurpation may be** upon a Feme Covert. 50 **E.** 3. 13. **b. at Common Law.**

If a Feme purchaſe an Advowſon, and take a Husband, and the Church voids, and the Stranger does preſent, and the Husband ſuffers an Uſurpation &c. By this Uſurpation the Wife ſhall be out of Poſſeſſion after the 6 Months paſt, and ſhe ſhall be put to her Writ of Right of Advowſon if ſhe have preſented before; and if ſhe have not preſented, ſhe is without Remedy; But otherwiſe it is, if the Feme hath an Advowſon by Deſcent, or by Courſe of Inheritance. F. N. B 34. (S.)

8. **If a Common Perſon uſurps upon the King, and his Clerk is admitted, inſtituted and** inducted, the King is put to his Quare Impedit, **and cannot preſent till the Incumbent is removed. Co.** 6. *Greene* 30.

But the King may bring his Quare Impedit at any Time during the Lives of the Patron and Incumbent or of the Incumbent only, tho' it be after the 6 Months. Br. Quare Impedit, pl. 39. cites 47 E. 3. 4.———If there be an *Uſurpation upon the King by by a compleat Plenarty*, the King cannot preſent to the Church before he has removed the Incumbent by Quare Impedit, leaſt Contentions might grow in the Church between the ſeveral Claimers of the Benefice, to the Diſturbance or Hindrance of Divine Service, and this was by the Common Law. But in that Caſe the King *is only put out of Poſſeſſion as to the bringing of an Action*, but the Inheritance of the Advowſon is not deveſted out of him. 2 Inſt. 358.

9. If

S. C. Jo 426. by the Name of Harper v. the Bailiffs and Burgeſſes of Derby, who preſented Wierſdale, and there ſame Point was agreed;

9. If the Ward of the King has an Advowſon in Groſs, whereof he is ſeiſed in Fee, but this is not found in the Office, and after the Church voids, though the King may preſent thereto without any Office thereof found, yet if a Stranger preſents, and his Clerk is in by 6 Months, and after the Heir ſues Livery, this is an Uſurpation upon the Heir; For the King without ſuch Office had not any Poſſeſſion therein to protect the Inheritance of the Heir. Hill. 14 Car. B. R. between *Harper and Wierſdale* in Writ of Error upon a Judgment in Bank in Quare Impedit adjudged per Curiam. Intratur.

becauſe the King for want of an Office found had not gained any particular Eſtate, and ſo this is ſuch Uſurpation as will deveſt the whole Intereſt in the Advowſon, and put the Heir out of Poſſeſſion. *But if an Office be found* in ſuch Caſe, and thereby the King intitled to the Advowſon during the Non-age of the Heir, and a Stranger preſents to an Avoidance happening after the Death of the Anceſtor and the Office found, this ſhall not deveſt the Reverſion out of the Heir; For tho' the Stranger has by his preſenting gained the Poſſeſſion of the Advowſon Pro hac Vice, yet this does not deveſt the Eſtate of the King during the Nonage of the Heir; and if the Eſtate of the King was not deveſted out of him, the Inheritance ſhall not be; For ſo long as the particular Leſſee or Grantee for Years, or the Lord by reaſon of Ward is in Poſſeſſion, the Reverſion ſhall not be deveſted or turned to a naked Right.

10. If an *Infant purchaſes an Advowſon*, and *Uſurpation is had upon him*, he ſhall not avoid it by Nonage; For *the Statute ſays, Per Negligentiam Cuſtodum*, which is of an Infant who is in *by Deſcent*; For an *Infant and Feme Covert* were bound by Uſurpation *at Common Law* after 6 Months. Br. Coverture, pl. 70. cites 35 H. 6. 62.

4 Le. 209. pl. 339. Mich. 18 Eliz. B. R. S. C. Anon.

11. The *King* was *ſeiſed of a Manor to which an Advowſon was Appendant*, and the Church being void, a *Stranger preſented* A. who was in by 6 Months *unknown to the* Council of the *King who afterwards granted the Manor with the Advowſon to W. R.* Then *A. died.* It was held per Cur. that the Grantee ſhall preſent, becauſe the Advowſon was always appendant, and the Inheritance thereof paſſed with it to the Grantee; for it was not made Diſappendant by this Uſurpation unto the King, though in the Caſe of a common Perſon it had been ſo, until he had continued it and made it appendant again by a Writ of Right of Advowſon. And it was agreed, that W. R. the King's Patentee ſhall have the next Avoidance, (though he could not have the preſent Avoidance for want of being mentioned in his Grant) and in Qua. Imp. to be brought by him, he ſhall make his Title by the laſt Preſentation of the King, without making Mention of the Preſentment of the Stranger. Hob. 140. pl. 192. Mich. 13 & 14 Eliz. Anon.

12. It was held by all the Juſtices, That no Uſurpation can be upon *Parſon imparſonee*. Pl. C. 501. Mich. 18 & 19 Eliz. Grendon v. Biſhop of Lincoln.

(K. c) Uſurpation. Upon whom. *In reſpect of Eſtate.*

S. P. if the Advowſon be *appendant*, but it ſerves for the others for Title in Quare Impedit after his Death. Br. Preſentation al &c. pl. 1. cites 27 H. 8. 1. But he ſays, Quære if it had been an Advowſon *in Groſs.*——If one preſents alone, and his Clerk is inducted, the other is out of Poſſeſſion. Br. Quare Impedit, pl. 52. cites 11 H. 4. 54. per Hanke. And Brooke ſays, the King's Attorney in 35 H. 8. agreed with Hanke clearly.

1. If two Jointenants are ſeiſed of an Advowſon, and the one preſents alone, yet this does not put the other out of Poſſeſſion. P. 7 Ja. B. between *Kite and the Biſhop of Briſtol.* Becauſe the Ordinary might have refuſed the Clerk, and by reaſon of their Joint Title. 27 H. 8. 11. b.

2. So

2. So one Tenant in Common of an Advowſon preſents alone, this does not put the other out of Poſſeſſion. P. 7 Ja. B. between Kite and the Biſhop of Briſtol.

Br. Preſentation, pl. 1. makes a Quære of this Point.

3. One Coparcener cannot uſurp upon the other by preſenting alone without the other. 17 E. 3. 37. b. P. 7 Ja. B. D. 9 El. 259. 20. Dubitatur 15 E. 3. Aſſiſe Darrein Preſentment. 11. 9 E. 3. 39.

Where *one Parcener preſents in the Turn of her Coparcener*, this does not put her to her Writ of Right of Advowſon as Uſurpation made by a Stranger ſhall do, by reaſon of the Privity, ſo that ſhe loſes nothing but this Turn, and ſhall have her Turn again when it comes to her Turn again Br. Quare Impedit, pl. 139. cites 22 E. 4. 8.—— S. P. Br. Quare Impedit, pl. 157. cites 2 H 7. 14.——*So of Grantees* of Coparceners. Br. Quare Impedit, pl. 139.

Ten Preſentations by one Coparcener ſhall not ouſt the other of his Turn, tho' the 6 Months paſs; For there is *Privity*, and they claim by one and the ſame Title; per Brud. Ch. J. in C. B. Br. Preſentation, pl. 23. cites 14 H. 8. 2.

4. If two Coparceners make Partition to preſent by Turn, the one may uſurp in the Turn of the other. 30 E. 3. 15.

Fin. Law. 8vo. 198 — Watſ. Comp. Inc. 8vo. 214. cap. 13. cites S. C.

5. But ſuch Uſurpation does not bind her upon whom the uſurpation is at her next Turn, but that ſhe may preſent.

6. If 2 Coparceners make Partition in Chancery, or make Compoſition by Fine to preſent by Turn, and after the one preſents in the Turn of the other, yet this doth not put her out of Poſſeſſion, but that ſhe may preſent to the next Turn, and this by the Aid of the Statute of Weſtminſter, 2 cap. 5. or by the Common Law. 33 E. 3. Quare Impedit. 196.

Watſ. Comp. Inc. 8vo. 214. cap. 13. cites S. C.

7. The Dean may uſurp upon the Chaper by preſenting alone, without the Chapter, to an Advowſon, whereof the Chapter is ſeiſed by themſelves (as it ſeems, tho' both are ſpiritual Perſons. 17 E. 3. 64. b.

8. If 2 Churches are united and conſolidated in one by the Aſſent of both Patrons, and it is agreed they ſhall preſent thereto Alternis Vicibus for ever, and after the one preſents in the Turn of the other, this is an Uſurpation; For they are not like to Coparceners who are privy in Blood. D. 9. El. 259. 20.

Watſ. Comp. Inc. 8vo. 218. cap. 13. cites S. C.

9. So if A. ſeiſed in Fee of a Manor, to which an Advowſon is appendant, makes Compoſition with B. by Fine to preſent by Turn; By this Compoſition the Advowſon is appendant every 2d Turn, and if the one uſurp upon the Turn of the other, this ſhall put him out of Preſentment; Becauſe they are not Privies in Blood as Coparceners are, nor in Eſtate, as Jointenants, or Tenants in Common are. D. 9. El. 259. 20.

* Fol. 373.

Watſ. Comp. Inc. 8vo. 218. cap. 13. cites S. C. D. 259 b. pl 2. cites 43 E. 3. 35.

10. If I am ſeiſed of an Advowſon, and preſent thereto as Procurator of J. S. this ſhall be an uſurpation upon myſelf. 17 E. 3. 60. adjudged.

F. N B. 35 (O) cites S. C. —— Ow. 142. Rudd v. Topſey. cites 17 E 3. 3. & 24 H. 6. —— See (F. b) pl. 5.

11. If a Man grants 2 next Avoidances to J. S. and after a Stranger uſurps upon the firſt Avoidance, this ſhall be an uſurpation upon the 2d Avoidance, ſo that it is turned to a Right; and becauſe the Grantee cannot have a Writ of Right, he is without Remedy. M. 16. Ja. B. between *Sir William Ellis* and *Taylor*. Per Curiam.

Watſ. Comp. Inc. 8vo. 217. cap. 13. cites S. C. — So where the Grantor himſelf uſurps upon the firſt Voidance. See (H. c) pl. 1. and the Notes there. —— But Ibid. pl. 2 is Contra.

12. If 2 Jointenants of a Manor, to which an Advowſon is appendant are, and the Church voids, and the one preſents alone, this is not any Uſurpation to his Companion, but it is good Title at the next Avoidance in a Quare Impedit to allege this Preſentment by the one to ſerve for both. 27 H. 8. 11. b.

See pl. 1?

By the Common Law, if an Advowſon deſcended to divers Coparceners,

13. 13 *E.* 1. *cap.* 5. S. 5. Enacts, That *when an* Advowſon deſcends unto Parceners, *tho'* one preſents twice, *and uſurps upon his Co-heir, yet he that was negligent, ſhall not be clearly barred, but another Time ſhall have his Turn to preſent when it falls.*

if they cannot agree to preſent, the Eldeſt ſhall have the 1ſt Turn, and ſo every one according to Seniority, and this Privilege extends not only to their Heirs, but to their Aſſignees, whether they have their Eſtate by Conveyance, or by Act in Law, as Tenant by the Curteſy, and therefore although the Coparceners do make Compoſition to preſent by Turn, this being no more than the Law appoints, (Expreſſio eorum quæ tacite inſunt nihil operatur) they remain Coparceners of the Advowſon, and the Inheritance of the Advowſon is not divided; and notwithſtanding this Compoſition, they may join in a Quare Impedit if any Stranger uſurp in the Turn of any of them; and the ſole Preſentation out of her Turn did not put her iſter out of Poſſeſſion in reſpect of the Privity of Eſtate, no more than if one Coparcener takes the whole Profits, 2 Inſt. 365.

This Law doth *extend to Uſurpation by one Coparcener upon another* as well *before Partition* as after. 2 Inſt. 365.

14. A Man ſeiſed of a *Manor with Advowſon appendant* had *Iſſue four Daughters*, and died, and *they made Partition of the Manor, and that each ſhould preſent by Turn in Degrees, as their Age was*, by which the *Eldeſt commenced* &c. *and her Clerk was in*, and after *the Eldeſt died, her Heir within Age, and found by Office for the King*, and he ſeiſed the Ward, and after the Church voided again, and the *King preſented in Turn of the ſecond Daughter:* And per Catesby the King preſented in Right of the ſecond Daughter, and therefore his Preſentment in the Turn of the ſecond Daughter, does not put her to Writ of Right of Advowſon; But to this Brian and Choke were ſtrongly Contra, and that it was Uſurpation; For there is *no Privity* of the Partition in the King, and *this Preſentation is in Jure Regis Proprio, as Lord*, and never ſhall make Title to the Heir in Quare Impedit. Br. Quare Impedit. pl. 139. cites 22 E. 4. 8.

15. Where there is a *Corporation of Maſter and Confrerers*, and the *Maſter preſents in his own Name*, this will not put the Succeſſor out of Poſſeſſion; For he cannot do a Tort to himſelf; per Fitzjames Juſtice; and all the Juſtices in B. R. were with the firſt Judgment. Br. Preſentation. pl. 23 cites 14 H. 8. 2.

16. If 2 *Jointenants preſent one of themſelves*, this does not gain Poſſeſſion; For *it is not a Preſentation, but a Prayer to be admitted.* Per Fitzjames. Br. Preſentation, pl. 23. cites 14 H. 8. 2.

But if a Biſhop be *Purchaſor* of an Advowſon, and ſuffers an Uſurpation, that ſhall not bind his Succeſſor.

17. Where a *Biſhop ſuffers* an Uſurpation of a Church in Right of his Biſhoprick, it ſhall not bind his Succeſſor, but himſelf only during his Time; And it was reſolved by all, that Uſurpations *ſhall bind the Biſhops* who ſuffer them, *but not their Succeſſors*; becauſe it is within the Statute 1 Eliz. which reſtrains Alienations and Grants by Biſhops &c. And Judgment accordingly. Cro. J. 673. Mich. 21 Jac. B. R. Dalton v. Biſhop of Ely.

Per Hobart Ch. J. Ibid.

Br. Error. pl. 83. cites S. C.

18. When one uſurps upon a *Leſſee for Years*, this gains the Fee, and puts the true Patron out of Poſſeſſion; And though by the Statute of W. 2. cap. 5. he in *Reverſion after the Leaſe may have* a *Quare Impedit*, when the Church is void, *or* may *preſent*, and *if he does preſent, and his Clerk is* admitted and *inducted*, then *he is remitted*, yet till it be recovered, or his Clerk be in, the Uſurper hath the Fee, and the Writ of Right lies againſt him, and that deſcends to his Heirs. Hutton. 66. Rudd. v. Biſhop of Lincoln.

(L. c) Uſurpation. Upon whom. In what Caſes Uſurpation * *upon one ſhall be upon others*, at the Common Law: * See (H. c)

1. IF Leſſee for Years, or Guardian, brings Quare Impedit, tho' the Defendant has Writ to the Biſhop **againſt the Termor or Guardian, and his Preſentee accepted, yet the** Tenant of the Franktenement **is not put out of Poſſeſſion thereby.** 50 E. 4. 14. b. **Curia.**

2. **If** 3 Coparceners make Partition to preſent by Turn, **and the** Eldeſt uſurps in the Turn of the Middlemoſt; **this ſhall not be any uſurpation upon the Turn of the youngeſt.** * 30 E. 3. 5. S. P. Watſ. Comp. Inc. 8vo. 214. cap. 13. cites Keilw. 1. 2 Inſt. 365. 2 H. 7. 4. 5. 22 E. 4. 9.——* This ſeems miſprinted for 30 E. 3. (15) and is the Caſe of Sir Richard Talbot v. the Biſhop of Hereford.

3. [So] **if** 3 **Coparceners are, and the** Eldeſt preſents in her Turn without Partition, and **after a** Stranger uſurps in the Turn of the ſecond, **yet this is not any uſurpation as to the 3d or 1ſt Coparcener, but only to the 2d.** 12 H. 7. **Kell. 1. Per Curiam.** The Court inclined that it would *put all out of Poſſeſſion*, and would not permit a ſpecial Verdict upon the Motion of Serjeant Maynard, but a Caſe was made of it for the Conſideration of the Judges 2 Vent. 39. Paſch. 35 Car. 2. C. B. Anon.——Watſ Comp. Inc. 8vo. 214. cap. 13. cites Same Caſes. And Dr. Watſon ſays the Caſe of Vent. ſeems to be upon this Reaſon that Partition. and cites made of an Advowſon does not ſever the Right and Inheritance thereof, but is only of the Poſſeſſion. and cites 2 Co. 87. **Corbet's** Caſe; therefore the Inheritance remaining intire, an Uſurpation a Severance in the Turn of one Coparcener, gains the whole Inheritance by Wrong till avoided, and conſequently muſt put all the Coparceners out of Poſſeſſion.

4. So **had it been, tho'** Partition **had been made** to preſent by Turn. 12 H. 7. **Kell. 1.** See (M. c) pl. 8.

5. If *Tenant for Life*, the *Remainder over in Fee ſuffers Uſurpation*, and the Tenant for Life dies, he in Remainder has no Remedy for this Uſurpation. Br. Quare Impedit, pl. 162. cites 16 E. 3.

6. An Advowſon deſcended to 3 *Coparceners Infants, and before Preſentment by any of them, a Stranger uſurps*, it ſeemed to the Court that Uſurpation ſhould be *upon all*; for one Right deſcended to them, and they may join in the Preſentment. 21 E. 3. 31. And tho' upon a Diſagreement between them, the Eldeſt may preſent, yet it is but a Privilege which the Eldeſt Daughter may waive. Trin. 20 Car. 1. C B. Rot. 1849. Hoy v. Blevy.

(M. c) Uſurpations. *Defeating* of Uſurpations.

1. **IF the** Diſſeiſor of a Manor to which **an Advowſon is appendant,** preſents **to the Advowſon, and his Clerk is** Inducted, and **after** Diſſeiſee re-enters, **at the next Avoidance he may preſent; for this defeats the Meſne Poſſeſſion and uſurpation.** * 3 H. 4. 8. † 14 H. 6. 16. * Br. Quare Impedit, pl. 45. cites S. C.—— † Br. Preſentation, pl. 31. cites S C.——*For* the Advowſon never was diſappendant; and by the Re-entry of the Diſſeiſee all Meſne Eſtates are defeated, and the Diſſeiſee remitted. Per Fulth, Which was neither denied by the Juſtices, nor affirm'd. Br. Preſentation, pl. 32. cites 14 H. 6. 24.—— It was ſaid for Law, that by his Regreſs he has recontinued the Manor, and the Advowſon was always appendant, and ſo remained after the Regreſs; but *contra of Advowſon in groſs*. Br. Quare Impedit, pl. 107. cites 14 H. 6. 15.

2. But if he re-enters within the 6 Months, **his Preſentee ſhall be received, and the other ouſted. (It ſeems it is intended upon Recovery in Quare Impedit.)** 14 H. 6. 24. Quære. Preſentation is in Nature of a *Re-entry* and

and Uſurpation by one that hath a *former Right*, but which was uſurp'd upon, ſhall work a *Remitter*. Cart. 44. Cornwallis v. Hood.

Fol. 374.

3. **But** otherwiſe **it is** [**of**] Advowſon in groſs. * 3 H. 4. 8. 14 H. 6. 16.

* Br. Quare Impedit, pl. 45. cites S.C.

F. N.B. 34. (S) in the Notes there in Marg.

4. **If a** Feme ſuffers an Uſurpation **upon her Advowſon**, and after ſhe takes Baron, who preſents **to the next Avoidance** in Right of the Feme (**and Clerk** inducted) **this veſts the Poſſeſſion in the Feme.** 14 H. 6. 24. **Quære.**

Watſ Comp. Inc.8vo. 240. cap. 13.

5. **If the** Patron **of an Advowſon** creates a Vicarage **out of it lawfully, and after a** Stranger uſurps **upon him** in the Parſonage, and after that in the Vicarage, **and then the** Patron recovers the Advowſon in Writ of Right, **yet this ſhall not defeat the Uſurpation in the Vicarage, becauſe the Vicarage is not appendant to the Advowſon, as it is implied by the Caſe; for this is put to prove it.** 17 E. 3. 51. b. **Curia.** (**It is to be admitted here, that the Patron of the Parſonage is Patron of the Vicarage.**)

Watſ. Comp. Inc.8vo. 239 240. cap. 13. cites S. C. but adds Quære.

6. **If an Advowſon** deſcends upon 2 Coparceners, **and after an** Uſurpation is made upon the one who dies without Iſſue, **by which her Right deſcends to the other Coparceners, this ſhall defeat the Uſurpation; becauſe ſhe cannot have Action of Parcel of the Advowſon being ſeiſed of the Remnant.** 17 E. 3. 22.

See (L. c.) pl 3. —— Watſ. Comp. Inc. 8vo. 239 cap 13. cites S. C.

7. **If** 3 Coparceners **are of an Advowſon, and the** eldeſt preſents in her Turn without Partition, **and after a** Stranger uſurps upon the Turn of the 2d, **and afterwards the** 3d preſents in her Turn, **this remits the 2d again, ſo that ſhe ſhall preſent again when it comes to her Turn; for their Right is joint, and ſo the Uſurpation being avoided by one, it is ſo for all.** 12 H. 7. Kell. 1. **Per Curiam.**

If an Advowſon deſcends to 4 Coparceners, and they make Partition to preſent by Turns, and the 3d preſents when the 2d ought, for that Time the Preſentment is gone, but when it comes to his Turn again he ſhall preſent. 4 Le. 222. pl. 356. cites 22 E. 4. Per Brian.

8. **The** Law **would be** the ſame tho' there was a Partition, **becauſe the Partition doth not ſever the Inheritance; for they ſhall join in Writ of Right, and the Partition is only as to the Poſſeſſion.** Contra 12 H. 7. Kell. 1.

9. *A Manor with Advowſon appendant deſcends to an Infant*, who *ſuffers Uſurpation*, and after *makes Feoffment of the Manor cum pertinentiis*; the Feoffee has no Remedy for the Uſurpation. Br. Quare Impedit, pl. 162. cites 16 E. 3.

Judgment in Quare Impedit brought *after the 6 Months*, ſhall reveſt the Right in the Patron. Harris v. Auſtin.

10. If a Recovery in Quare Impedit be within ſix Months againſt the Incumbent, he is removed by the Judgment; ſo that if the *Recoverer ſuffers the Incumbent by Agreement to continue Incumbent during his Life*, yet his Patronage is reveſted by the Judgment. Per Coke, Doderidge and Haughton. Roll. R. 213. Trin. 13 Jac. B. R. Harris v. Auſtin.

Per Coke Ch. J. but he ſays he will not call it a Remitter. Roll. R. 214. in Caſe of Harris v. Auſtin.

11. Pemberton took this *Difference, where the King has a good Title*, no Recovery againſt his Clerk ſhall affect the King's Title; for he ſhall not be prejudiced by a Recovery, to which he is no Party. If the King have a *defeaſible Title, as by* Uſurpation, there if the rightful Patron recover againſt the King's Incumbent, the King's Title ſhall be bound, tho' he be not a Party; For his Title having no other Foundation than a Preſentation, when that is once avoided the King's Title falls together with it. But tho' the King's Title be only by Uſurpation, yet a Recovery againſt his Clerk by a Stranger, that has nothing to do with it, ſhall not prejudice the King; Covin may be betwixt them, and the King be triced. And North Ch. J. ſaid, He was clearly of Opinion, That the King's

King's Title by Uſurpation ſhould be *avoided* by a Recovery againſt his Clerk, tho' the Recoveror were a mere *Stranger*. Mod. 255, 256. Trin. 29 Car. 2. C. B. the King v. Thornborough and Studley.

* (M. c. 2) [Deſeated by] *Remitter*.

See 7 Ann. 18. at (C. c. 2) —— See (M. c) pl. 1, 2, 7, 8.

* There is no Letter to this in Roll, and the Pleas go on 9, 10 &c but to prevent Confuſion, I have added a Letter, and alter'd the Number of the Pleas, yet ſo as as the old Numbers appear at the ſame Time.

[1.] 9. If a ‡ Man uſurps upon me, and at the next Avoidance I uſurp upon him, I am remitted to my ancient Right, and the uſurpation upon me deſeated. 17 E. 3. 37. b.

‡ So if the King uſurps upon me, and I uſurp upon him again, and preſent, and my Clerk is in by 6 Months, I am now remitted; And ſo it was adjudg'd in Dyer's Time, upon Fithherbert's Caſe; becauſe his Clerk was legally in by 6 Months, and ſo a Remitter, which ſhall bind the King. Per Coke Ch. J. 3 Bulſt. 38. Trin. 13 Jac. in the Caſe of Harris v. Auſtin.

[2.] 10. If an Advowſon be aſſign'd to 2 Daughters Coparceners in Chancery, and the Eldeſt after preſents to the * next Avoidance, this ſhall be in her ancient Right, and not by uſurpation, becauſe the firſt Preſentment of Right belongs to her; and this ſhall avoid the Aſſignment in Chancery. 17 E. 3. 30. 38. Adjudg'd.

* Watſ. Comp. Inc. 8vo. 213. cap. 13. cites S. C.— but the Doctor ſuppoſes the Preſentment of the Eldeſt to be contrary to the Aſſignment.

[3.] 11. If a Man uſurps upon me, and his Clerk is in by 6 Months, and after I bring a Quare Impedit againſt Patron and Incumbent, and they do not plead Plenarty by 6 Months, but I recover upon Non ſum Informatus pleaded, I am by this remitted. M. 12 Ja. B. between *Auſtin* and *Harris*. Per Curiam. Trin. 13 Ja. B. R. Same Caſe.

[4.] 12. So the Law would be tho' I was a Purchaſor of the Advowſon, and never preſented before the uſurpation. M. 12 Ja. B. Dubitatur. My [Reports.] Tr. 13 Ja. B. R. Same Caſe.

If *A. purchaſes* an Advowſon, *and before any Preſentation* had by him, *another uſurps* upon A. and preſents, and A. brings a Quare Impedit after the 6 Months, and a Plea of *Non ſum Informatus* is enter'd for the Incumbent, the Advowſon is hereby reveſted; for here was but a Remedileſs Right, and if you will not take Advantage of it, A. ſhall hereby have his Right again. A. had a Right, and having a Judgment to recover that to which he had a Right, his Right ſhall thereby be recovered. Per Coke Ch. J. 3 Bulſt. 46. Trin. 13 Jac. B. R. in the Caſe of Harris v. Auſtin.

[5.] 13. If I [am] ſeiſed of an Advowſon, and after the Church voids the King preſents by Uſurpation, and 6 Months paſs, and after I bring a Quare Impedit againſt the Incumbent of the King, who does not take Advantage of the Plenarty, but upon Non ſum Informatus pleaded I recover, I ſhall thereby be remitted. M. 12. Ja. B. between *Auſtin* and *Harris*. Tr. 13 Ja. B. R. Same Caſe.

The King's Title being by Uſurpation, the Patron by this Recovery is remitted to his ancient Right, and Judgment accordingly. Brownl 165. Paſch. 12 Jac. S. C. by Name of Auſtin v. the Biſhop of London & al. —— 3 Bulſt. 36. S. C. by Name of Harris v. Auſten. —— Roll. R. 210. S. C.

[6.] 14. But otherwiſe it would be, if I am a Purchaſor of the Advowſon, and the King uſurps before any Preſentment by me, and 6 Months paſs before the Quare Impedit brought againſt the Incumbent, and after I recover in a Quare Impedit brought after the 6 Months paſs'd againſt the Incumbent upon Non ſum Informatus pleaded, without taking Advantage of the Plenarty, I ſhall not be remitted; becauſe by the Uſurpation and 6 Months paſs'd, I have but a Remedileſs Right, without any Action to recover it, and the King is not Party to the Action. M. 12 Ja. B. between *Auſtin* and *Harris*. Tr. 13 B. R. Same Caſe.

Fol. 375.

3 Bulſt. 36. S. C. by Name of Harris v. Auſtin —— Roll. R. 210. S. C.

[7.] 15. If A. ſeiſed in Fee of 6 Acres, to which an Advowſon is appendant, dies ſeiſed, and this deſcends to B. and a ter A. is attainted of Treaſon by Act of Parliament, by which the King ſeiſes the 6 Acres, and he ſo ſeiſed, the Church voids, and J. S. uſurps upon the King; and after the Act of Parliament is repealed, and B. reſtored, by which he enters into the 6 Acres, and after the Church voids; the ſaid uſurpation continues not defeated by the Repeal of the Act of Parliament, ſo that B. nor his Feoffee of the 6 Acres cannot maintain a Quare Impedit againſt J. S. who uſurped before, if he diſturbs them. D. 28 H. 8. 24. 153 Adjudg'd, as it ſeems, upon this Reaſon.

[8.] 16. If A. uſurps upon B. a Purchaſor of an Advowſon in Fee, and the Clerk of A. is in by 6 Months, and after the Church voids, and B. preſents C. and he thereupon is inſtituted and inducted; but A. brings Quare Impedit againſt B. and C. This is no Remitter to B. the Writ being brought within the 6 Months; for during this Time that the Clerk is to be removed by the Writ, this is not any Remitter. H. 14 Car. B. R. between *Harper* and *Wierſdale*. Adjudg'd Per Curiam, in Writ of Error upon a Judgment in a Quare Impedit in Bank Intratur.

Roll. R. 214. S. C. cited Per Coke Ch. J. in S. C. —

9. If *Tenant in Tail* be diſturbed, and where he ought to have a Quare Impedit he *brings a Writ De Droit* D'Advowſon, *and* in this *recovers*, he ſhall be in by Force of the Tail, and not in Fee-Simple, notwithſtanding the Gift of the Action be ſo; for where a Judgment and my Right do meet together, I ſhall be in in my Right. Per Coke Ch. J. 3 Bulſt. 46, 47. in the Caſe of Harris v. Auſtin. cites 4 E. 3. F. 19. by Wilby.

If Tenant in Tail of a Manor, unto which an Advowſon is appendant, diſcontinue the Manor in Fee with the Advowſon, and after the Diſcontinuor granteth the Advowſon unto another in Fee, and afterwards doth re-infeoff the Tenant in Tail of the Manor, who dieth ſeiſed of the Manor; his Heir ſhall preſent unto the Advowſon when it ſhall happen void; And if he be diſturbed, he ſhall have a Quare Impedit, becauſe he is remitted unto the Manor, and hath not Remedy to come at the Advowſon. F. N. B 35. (B) cites 29 H. 6. Quare Impedit 79.

S. C. cited by Coke Ch. J. as mentioned by Huſſey; but Coke ſays, He has the Book but cannot find the Caſe there. 3 Bulſ. 46. in the Caſe of Harris and Auſtin.

10. Where the *King recited*, That *whereas he had recovered an Advowſon by Default* in a Quare Impedit *againſt a Stranger*, *which* Advowſon *was lawfully appropriated to the Abbot long Time before this Recovery*, and after the King, by his Letters Patents reciting the Recovery, *grants* the Advowſon *to the Abbot and his Succeſſors*, it was adjudg'd that the Abbot ſhould not be in by the King, but by his ancient Right in his Remitter according to their Appropriation, and not by the laſt Grant; becauſe the Letters Patents recited, that they had other Right before the Recovery. Per Huſſey Ch. J. 21. E. 4. 49. a. cites it as adjudged 32 E. 3.

Roll. R. 214. S. C. cited Per Coke Ch. J. in S. C.

11. If the *King uſurps* upon J. S. and afterwards by his Letters Patents *grants this unto him again*, this Judicial Patent, *reciting his ancient Right*, ſhall reveſt this in him, and he ſhall be in again in his ancient Right. As where he uſurped by Preſentation to the Advowſon of a Houſe of Religion, and afterwards, reciting the ancient Right of the Abbot, grants this Advowſon again to him and to his Succeſſors for ever; the Abbot, by this grant, is in again in his ancient Right. Per Coke, Ch. J. 3 Bulſt. 46. in the Caſe of Harris v. Auſtin. cites it as adjudg'd 2 H. 7. f. 17.

Br. Preſentation. pl 57. cites S. C. But Brooke makes a Quære.

12. If *Husband and Wife preſent* to an Advowſon *in the Right of the Wife*, which is *appendant* unto a Manor of the Wife's, and afterwards the *Husband aliens one Acre*, *Parcel* of the Manor, with the Advowſon in Fee to a Stranger, *and dies*, and the *Stranger preſents and aliens the Acre* to another in Fee, *ſaving the Advowſon* to himſelf, and then the Church voids, the Wife ſhall preſent; and if ſhe be diſturbed, ſhe ſhall have an Aſſiſe of Darrein

Darrein Preſentment, becauſe the Advowſon was ſevered from the Acre; but if the Advowſon were appendant to the Acre, then the Wife ought to recover the Acre before ſhe preſent to the Advowſon. F. N. B. 32. (K)

13. If a Man traverſe an *Office found of a Manor*, unto which an *Advowſon is appendant*, and *upon* the *Traverſe* * the *King leaſes the Manor* unto him who tendered the Traverſe, without mentioning the Advowſon, and afterwards the Church voids, he who tendered the Traverſe ſhall have the Preſentment, if the Traverſe be found for him. F. N. B. 34. (P)

* For in that Caſe the Leaſe amounts to a Reſtitution; but if the King ſeiſes a Priory alien,

and leaſes the Priory to Farm during the War, without mentioning the Advowſon, the King ſhall have it. F. N. B. 34 (P) in the Notes there. (f) cites 29 E. 3. 18. (or 98)

14. Where an *Infant has* an *Advowſon by Deſcent*, and the Church voids, and *he, who hath Title Paramount, uſurps* and preſents unto the ſame Church, and the 6 Months do paſs; *he is remitted* by this Uſurpation, and the Infant out of Poſſeſſion, and without Remedy by that Uſurpation. F. N. B. 35. (M)

S. C. cited Le. 331. Trin. 30 El. B. R. in the Caſe of Wade v. Preſthall.

15. *Two ſeveral Purchaſors* are *of the Reverſion in Fee* of an Advowſon *after a grant of the next Avoidance.* An Avoidance happens, and *by Confederacy one of the Purchaſors preſents in the Turn of the Grantee of the next Avoidance*; but upon a Bill by the other Purchaſor, 'twas decreed, that no Benefit ſhould be had by this Uſurpation, ſo as to defeat the Plaintiff's Title, nor ſhould it be given in Evidence againſt him at a Trial at Law, which was then order'd. N. Ch. R. 4. Paſch. 3 Car. Markhall v. Hide.

(N. c) * *Quare Impedit. Of what* Thing *it lies.*

* A Quare Impedit *is in the Nature of a Treſpaſs*, and is all one with a *Darrein Preſentment.* The Writ

1. A Quare Impedit lies of a Donative, and the Writ ſhall be Quod permittat ipſum preſentare ad Eccleſiam &c. and declare the Special Matter in his Declaration. Co. Litt. 344.

of Right of Advowſon complains of the Deforcement of the whole Advowſon; The Quare Impedit and *Darrein Preſentment* complain only of a Chattel, viz. of the preſent Avoidance. Jenk. 13. pl. 23. ——— On a Writ of Error upon a Judgment in a Quare Impedit brought out of Ireland, Exception was taken amongſt others, That the Writ of Error was Quia cum &c. per breve noſtrum de Quare Impedit; Whereas the Words of the Writ are, *Quod permittat ipſum præſentare &c.* And there *is no ſuch Writ as Quare Impedit*; But it was anſwered, That Bracton 246, 247 diſtinguiſhes between the Writs of Quod Permittat and Quare Impedit, That Quod permittat was either an old antiquated Writ, or taken away by ſome old Statute now loſt, and cited the Statute 13 E. 1. cap. 5. and Maynard's E. 2. fol. 300 Mich. 10. E. 2 to prove that there never was ſuch a Writ as Quod permittat; That in all Judicial Records it is called a Quare Impedit, and ſo in Writs of Enquiry, and ſo in Writs to the Biſhop for admitting Clerks, and cited ſeveral other Books. And per Cur. as to the Calling the Writ Quare Impedit inſtead of Quod permittat, the Fact is, That there was formerly a Writ of Quare Impedit, now out of Uſe; And the Writ Quod permittat is now erroneouſly called by the Name of Quare Impedit; This Error has prevailed in judicial Writs and Acts of Parliament, but never yet in Writs of Error; However, it being become now a legal Name, the Writ of Error ought not to be diſallowed for uſing of it. 10 Mod. 308. &c. Paſch. 1 Geo. B. R. the King v. the Biſhop of Meath.

2. 13 *E.* 1. *cap.* 5. Sect. 4. Enacts, That * *from henceforth* † *Writs ſhall be granted for* ‡ Chapels, Prebends, ‖ Vicarages, Hoſpitals, Abbies, Priories, *and other Houſes which be of the Advowſons of other Men that have not been uſed to be granted before.*

* It appareth here, and by 6 E. 3. that before this Act Writs did

not lie de Capellis Prebendis &c. and yet it is adjudged in 14 H. 3. which was long before this Statute that a Quare Impedit did lie of a Chapel; and it was reſolved in Parliament, Hill. 19 H. 3. Quod nulla Aſſiſa ultimæ Præſentationis capiatur de Eccleſiis Prebendatus, nec de Prebendis; but now this Act hath made it clear, and the Writ ſhall be Ad Capellam. & 2 Inſt. 363, 364.

† That is, Writs of Advowſon, Quare Impedit, and Aſſiſe of Darrein Preſentment, which in this Act had been named before 2 Inſt. 364.

‡ A Quare Impedit lay of a Chapel at Common Law. F. N. B. 33 (C) in the Notes there (e) cites 24 H. 3. Quare Impedit. 183. ——— And ſo it did of a Prebend. F. N. B. 33. (c) in the Notes there (e) cites 13 R. 2. Brief 643.

As

As to the Word (Chapel) When the Queſtion was, Whether it were Eccleſia, aut Capella Pertinens ad Matricem Eccleſiam, the Iſſue was, Whether it had *Baptiſterium & Sepulturam*; For if it had the Adminſtration of Sacraments and Sepulture, it was in Law adjudged a Church. Trin. 20 E. 1. in Banco Rot. 177. in Quare Impedit Ric' de **Smith**'s Caſe. Mich. 21. E. 1. in Banco. Rot. 1. Hertf. **Prior de Elits** Caſe. Hill. 8 E. 1 in Banco, **Roger de Bigod, and Count de Moiſe**'s Caſe. Hill 8 E. 2. coram Rege Cornub. pro Capella Sancti Berione. A Capella venit Capellania; Rot Cart. 26. Nov. An. 28 H. 3. in Cart' Fact' Will. Oxon. Epiſcopo & Capellan' ut patet Mich. 32 E. 1. Coram Rege Gloc', Capellania ſancti Oſwaldi Prioratus, Sancti Oſwaldi de Gloc' quæ eſt de Libera Capellania Noſtra. 2 Inſt. 363.

If a *Patron of a Chapel preſent* unto it *by the Name of a Church*, and the Clerk be inſtituted and inducted thereunto &c. it hath loſt the Name of a Chapel. 2 Inſt 364.

‖ Quare Impedit was brought *by a Prebendary* of an Avoidance *of a Vicarage*, which was *appendant to his Prebend*, Quod nota. Br. Quare Impedit. pl. 95. cites 24 E. 3. 26 ——— Br. Preſentation. pl. 26. cites 24 E. 3. 26. ——S. P. Br. Quare Impedit. pl. 156. cites F. N. B. fol. 32, 33.

It was objected, That Quare Impedit does not lie of an Archdeaconry-ſhip; For it is not local, nor any Indenture made thereof, but it is only a Matter of Function, but it was not allowed; For an Archdeacon hath Locum in Choro; And by the Statute a Quare Impedit lies of a Chapel, and by Equity thereof, of a Prebend. Le. 205. Trin. 31. Eliz. C. B. Smallwood v. the Biſhop of Lichfield — Ow. 99. S. C. by Name of Sale v. Biſhop of Lichfield. ——— The King ſhall have a Quare Impedit of the *Sub-Deaconry of York*, which is voided when the Temporalties of the Archbiſhoprick were in the King's Hands. F. N. B. 34. (G)

3. Quare Impedit lies of an *Archdeaconry*. Br. Quare Impedit. pl. 100. cites 24 E. 3. 42.

*S. P. where there was a Compoſition,

4. A Quare Impedit lies of a * *Chantery* of Saint T. in O. Br. Quare Impedit. pl. 5. cites 9 H. 6. 16.

that if the Patron did not preſent within one Month, that then the Ordinary ſhould preſent. Br. Quare Impedit. pl. 131. cites 13 E. 4. 3. ——So of a Chantery, which is Donative by Letters Patents F. N. B. 33. (C) ——— A Quare Impedit of a Chantery ought to ſhew in what Church or Chapel the ſame is. F. N. B. 33. (C) in the Notes there (e) cites 12 H. 4. 19. See Lib. Entr. 499.

S. P. F. N. B. 33. (A)— None ſhall have Quare Impedit preſentare ad

5. A Man may have Writ of Right of Advowſon de Advocatione *Medietatis Eccleſiæ*, but not Quare Impedit; For this is Quod ipſum preſentare ad Eccleſiam, ſo that this is all for the Preſentation only. Br. Quare Impedit. pl. 10. cites 33 H. 6. 11.

Medietatem Eccleſiæ, but when there are 2 *ſeveral Patrons, and* 2 ſeveral *Incumbents* of the Church within one and the ſame Vill, ſo that the one Patron has a diſtinct and ſeparate Advowſon of one half of the Church, and his Incumbent has a diſtinct and ſeparate Half of the Tithes, and other Eccleſiaſtical Profits within the ſame Vill; So of the other Patrons, Mutatis Mutandis, and in this Caſe the Advowſon and the Church are ſevered in Right and in Poſſeſſion; But when there is only one Incumbent, tho' the Advowſon is divided and ſevered in ſeveral Hands, yet there never ſhall be a Quare Impedit Preſentare ad Medietatem ſeu *tertiam Partem Eccleſiæ* &c. and the Reaſon of this Diverſity is manifeſt; For every Quare Impedit is in the Poſſeſſion, and reſpects the Church which belongs to the Incumbent. Reſolved. 10 Rep. 135. b. Trin. 10 Jac. C. B. Smith's Caſe.

F. N. B. 39 (G) ſays, It ſeems (within the Writ [there] above-mentioned, that) a Man ſhall have a Quare Impedit quod permittat ipſum præſentare ad tertiam Partem Eccleſiæ; and that it ſeemeth to ſtand with Reaſon; For a Conſolidation may be made of 3 Advowſons, and every Patron to preſent by Turn, and then every one hath a Right to a third Part.

6. Quare Impedit lies of *a Priory*, or of an *Abbey*. F. N. B. 33. (F)

7. A Man ſhall have a Quare Impedit of an *Hermitage*; And a Writ to put him into corporal Poſſeſſion. F. N. B. 34. (E)

Quære where this Caſe is; For I do not obſerve, that it is warranted by either of the Books cited, nothing being there ſaid of a Church in Antient Demeſne.

8. It will lie for a Diſturbance to preſent to a *Church in Wales*; it will lie alſo for a Diſturbance to preſent to a *Church in Antient Demeſne*, tho' it concerns the very Poſſeſſions in Antient Demeſne; For the Common Law, being as antient as thoſe Privileges which Men have in their Lands held in antient Demeſne, will not ſuffer that there ſhould be a Failure of Juſtice, under Pretence of any Manor of Privilege whatever. 3 Nelſ a. 35. pl. 3. cites Hob. 48. Cox v. Barnsby. 5 Rep. Alden's Caſe. S. P.

(O. c) *Who ſhall have* Quare Impedit.

1. THE Grantee of a next Avoidance **ſhall have a Quare Impedit againſt the Patron who granted it.** 39 H. 6. Quare Impedit. 95. **Per Curiam, and ſaid to be oftentimes adjudged.**

See Br. Quare Impedit. pl. 160. S. P. admitted. And

Br. N. C. 4 E. 6. pl. 410. by Name of Ogle v. Harriſon. —— A. *grants* that whenſoever the Church becomes void, *that B.* and his Heirs ſhall *nominate* a Clerk to the Grantor and his Heirs, *and that he and his Heirs will preſent him over* to the Ordinary, and the beſt Opinion was, That every of them ſhall have Quare Impedit, if B. preſents to the Ordinary, A. ſhall have Quare Impedit, & e contra, And tho' the one has a Writ to the Biſhop, this ſhall not ouſt the other of the Poſſeſſion. Mo. 49. pl. 147. Paſch. 5 Eliz. Anon.

If the *next Avoidance be granted to* 2, and one, before the Church avoid, *Releaſes* to the other, the Releſſee may have Quare Impedit in his Name alone. Adjudged and affirmed in Error. Mo. 467. pl. 664. Trin. 39 Eliz. Lewis v. Bennet.

2. Before **the Statute of** 27 H. 8. **of Uſes, if** Ceſty que Uſe of a Manor, to which **an Advowſon was appendant, preſents to the Church when it becomes void, and this** by Sufferance of the Feoffee, **yet if he be diſturbed, he cannot maintain a Quare Impedit; For he has not any Eſtate at Will.** 17 H. 7. **Kell. 42. b.**

Quare Impedit by the *King*, and *made Title, becauſe* J. N. who was *Patron was out-law'd*, and the Church voided, and the King preſented &c. The *Defendant ſaid that before the Outlawry, the Patron infeoffed* 3 *to his Uſe in Fee*, and the Church voided after the Outlawry, and he preſented at the Will of the Feoffees, and therefore Writ awarded to the Biſhop for the King; And ſo it ſeems, that upon Voidance Ceſty que Uſe has a Chattel, and therefore it ſhall be forfeited by Outlawry, Quære if he had preſented Nomine Feoffati. Br. Preſentation. pl 16. cites 3 H. 5. 3.

3. Quare Impedit lies for the *Biſhop*, who is diſturbed, to have Preſentment to the Prebend; So for the *King*, *the Temporalties being in his Hands*. Br. Quare Impedit. pl. 94. cites 24 E. 3. 26.

Br Preſentation pl. 25. cites S C. And adds, That in ſome Places the Dean ſhall preſent to ſome Prebends.

4. Quare Impedit by the King of the *Vicarage* of B. and found againſt him, and the Defendant prayed Writ to the Biſhop; and Thorp J. took Time to adviſe; For he *doubted whether a Layman could be Patron of a Vicarage*, but a Parſon or Parſon imparſonee. Br. Quare Impedit pl. 105. 39 E. 3. 33.

5. *Diſſeiſee of a Manor*, to which an Advowſon is appendant and voids, may have this Writ. F. N. B. 33 (Q)

6. *The Iſſue in Tail* ſhall not have Formedon of an Advowſon in Groſs, aliened by his Anceſtor, but Quare Impedit at the next Avoidance in his Turn. Br. Quare Impedit. pl. 60. cites 14 H. 4. 33.

7. Where *a Prior was Parſon Imparſonee*, and *J. N. preſented his Clerk to the ſame Church*, who was Admitted, *Inſtituted, and Inducted*, by this the Prior is not out of Poſſeſſion; For *he cannot have Writ of Right, nor Quare Impedit*; For he is in Poſſeſſion, and ſo he *ſhall have no Action, but Treſpaſs, or Spoliation in the Spiritual Court*, becauſe the Church is adjudged always full of him. Per Priſot. Br. Preſentation pl. 36 cites 39 H. 6. 20.

But as to a Stranger who has juſt Title to preſent, it ſhall be adjudged void; For *Parſon Imparſonee cannot plead Plenarty*, but

it is always full as to him who no Right has, and the Admiſſion, Inſtitution, and Induction ſuppoſed is not to the Purpoſe, if he who preſents has not Title; But the Prior continues Parſon, and the Opinion of the Court was, that the Church is always full of the Prior, and that the other who was Admitted, Inſtituted and Inducted, was not Parſon. Ibid. —— Br. Quare Impedit pl. 114. cites S. C. —— Ibid. pl. 111. cites 38 H. 6 11. S. C.

8. 7 *H.* 8. 4. Enacts that *Recoverers of Manors &c. and Advowſons, their Heirs and Aſſigns, ſhall have Quare Impedit for an Advowſon, if upon a Voidance any Diſturbance be made by a Stranger, as the Recoverees might have had, albeit they were never ſeiſed thereof by Preſentation.*

9. If the *Patron ſells the Fee* of the Advowſon *after the Avoidance*, neither he nor his *Vendee* can have a Quare Impedit, becauſe the Avoidance makes it a Choſe en Action; ſo that it does not paſs to the Grantee, and the Grantor has deſtroy'd his Action by his Conveyance, and ſo none can have it. Cro. E. 811. Hill. 43 Eliz. C. B. Leak v. Biſhop of Coventry and Babington.

And. 244. pl. 257. S. C. by Name of

10. Quare Impedit lies *for Executors*. 4 Le. 15. pl. 53. Mich. 32 & 33 Eliz. Smallwood v. The Biſhop of Coventry and Litchfield.

Sale v. the Biſhop of Coventry and Marſh. — Cro. E. 207. S. C — 4 Le. 205. S. C. —— Ow. 99. S. C. by Name of Sale v. the Biſhop of Litchfield.

It was ſaid that if Husband has an Advowſon in Right of the Wife, and the Church becomes void and the Husband dies, the Executors ſhall have the Preſentation; and that there are many Books in that Point; and Anderſon ſaid he knew that well, but that he doubted of the Law in that Caſe. Goldsb. 37. pl. 10. in Specot's Caſe. — See (P. c) pl. 1.

11. *A. preſents B.* and before Inſtitution *revokes* that, *and preſents C.* Quare Impedit lies for C. Agreed by all. Latch. 248. Hill. 22 Jac. in Caſe of Evans v. Aſcough.

12. *He that has* the *Nomination* is only Patron, and ſhall have a Quare Impedit or a Writ of Right, as his Caſe requires. Dod. of Adv. 66. Lect. 12.

(O. c. 2) One or ſeveral, and where *two* ſhall *join*.

But now the common Opinion is,

1. BY the Regiſter the *King* ſhall *join with another* Perſon in a Quare Impedit. F. N. B. 32. (G.)

that the King ſhall have the whole Preſentment alone, and alone ſhall have the Action; but methinks that it ſtands with Reaſon, that the King and the other join; as in a Popular Action the Party ſhall ſue for the King and for himſelf, and the Words of the Writ are, Qui tam pro Domino Rege, quam pro ſeipſo ſequitur &c. and that in an Action of Debt &c. and by the ſame Reaſon the King may ſue for himſelf and for the Party. And the common Experience is, that a Man ſhall hold Lands in common with the King, and alſo Chattels; and by the ſame Reaſon they may have the Preſentment or Advowſon in common. F N. B. 32. (G.)

2. If a Man has an Advowſon, and the *Church voids*, *and two Strangers* do *ſeverally preſent their Clerks* to the Biſhop to that Advowſon; the Patron ſhall have *diverſe Quare Impedits* againſt them, if he will, and ſhall have ſeveral Judgments, and ſhall recover ſeveral Damages for their ſeveral Preſentments and Wrongs done. F. N. B. 35. (N.)

Note, They may waive the Partition of the Advowſon and the Allotment thereon,

3. If *Coparceners make Compoſition* to preſent by Turns, and *a Stranger uſurps* and preſenteth *in the Turn of one* of them, yet if they will, they may join in a Quare Impedit againſt the Stranger, notwithſtanding the Compoſition. F. N. B. 36. (D.)

and preſent by a new Partition. F. N. B. 36. (D) in the Notes there (a) cites 21 E. 3. 31. 13 E. 3 Qua. Imp. 58. 33 E. 3. Qua. Imp. 196. by Skipw.

(P. c) What Perſons *may* have it upon the Diſturbance.

Quare Impedit was brought by *J. N.* and counted of *Agreement to preſent by Turn between* 3 *Siſters* of the Advowſon appendant, and that he married the one, and this is the Turn of his Feme &c. and the Defendant demanded Judgment of the Writ, becauſe it is in Jure Uxoris,

1. IF the Baron be diſturbed to preſent to an Advowſon which he has in Right of his Wife, and dies, the Feme ſhall have a Quare Impedit of this Diſturbance. 3 E. 3. Quare Impedit 57. 3 H. 5. Quare Impedit 71. admitted.

ris, who is in full Life not named; and yet the Writ awarded good, becauſe *nothing is to be recovered but the Preſentment and not the Advowſon*; and if Writ to the Biſhop be awarded againſt the Baron, yet by this the Feme is not out of Poſſeſſion; for ſhe is not Party to the Judgment, and alſo ſhe is aided by the Statute of Weſtminſter 2. Br. Baron and Feme, pl. 28. cites 50 E 3. 13.

If *Baron* be ſeiſed *of an Advowſon in Jure Uxoris, As in Dower*, and the *Church voids*, and the *Feme dies before Diſturbance*, and after the Baron is diſturb'd, he ſhall have this Preſentation. Per Thirn quod non negatur. Br. Preſentation, pl. 15. cites 54 H. 4. 12.

2. Guardian in Socage of a Manor, to which **an Advowſon is appendant, if he be diſturbed, ſhall have a Quare Impedit** in his own Name; **tho' he cannot make Account thereof. Time of E. 1. fol. 132. adjudged.**

Fol. 376.

If there be Guardian in Socage of a Manor, unto which an Advowſon is appendant, and the Church voids, the Heir ſhall preſent, and not the Guardian, becauſe he cannot account for the ſame. F. N. B. 33. (T)——It ſeems the Preſentment ought to be in the Name of the Heir, and yet a Guardian in a Quare Impedit againſt him may make Title againſt the Stranger in Right of the Heir, and alſo have a Writ to the Biſhop thereupon, but he cannot maintain Quare Impedit. F. N. B. 33. (T) in the Notes there (a) cites 29 E. 3. 5. 14. 22. 27 E. 3. 89. a. 8 E. 2. Preſentment 10

3. One *Coparcener*, upon Agreement to preſent by Turn, ſhall have Quare Impedit againſt the other who diſturbs him in his Turn; quod nota. Br. Quare Impedit, pl. 139. cites 22 E. 4. 8.

So where Jointenants make Partition by Deed to preſent by Turn, and one of them, or the Grantee of one is diſturb'd in his Turn, he may bring Quare Impedit. See 1 Salk. 43. Mich. 11 W. 3. B. R. Biſhop of Salisbury v. Philips.——And 12 Mod. 321. S. C.

4. Three *Jointenants* were ſeiſed *of certain Land to which an Advowſon was appendant*, and *the one preſented alone*, and his Clerk admitted and in, and after *he, who preſented him, died*, and after the *Incumbent died*, and the other *two who ſurvived* preſented and were diſturb'd, and *brought Quare Impedit*, and ſhew'd this Preſentment for their Title, and admitted. Brooke ſays, And ſo ſee that the Preſentation of the one Jointenant does not put his Companion out of Poſſeſſion, and adds a *Quære* if it had been an *Advowſon in groſs*, and quære if they had been Tenants in common. Br. Quare Impedit, pl. 3. cites 27 H. 8. 13.——But by P. 37 H. 8. Horwood the King's Attorney was clear in Opinion, that ſuch Preſentment of the one puts the others out of Poſſeſſion; and Bromley and Hales Serjeants contra.

But by 7 Annæ, cap. 18. S. Uſurpation ſhall not diſplace the Eſtate of the Patron.

[P. c 2] *Againſt whom.* By what Perſons.

[1.] 3. THE Chapter **may have it** againſt the Dean of their ſeveral Poſſeſſions. 40 E. 3. 28. b.

Watſ. Comp. Inc. 8vo. 441. cap. 22. cites S. C.

[2.] 4. A Prior **may have it** againſt the Abbot. 40 E. 3. 28. b.

The *Founder of a Priory* ſhall have a Quare Impedit *againſt the Subprior and* the *Convent*, if they diſturb him, to preſent to an Advowſon which belongeth to the Houſe, if it voids during the Vacation, where the Founder ought to have the Temporalties during the Vacation F. N. B. 34. (O) cites p. 9 E. 3—The Patron of an Abbey Preſentative brought a Quare Impedit againſt the Superior (Sub-prior) and Convent. F N. B. 34 (O.) in the Notes there (e) cites 11 E. 3. Quare Impedit 157. 18 E. 3. 15.—S. P. F. N. B. 38. (G) cites Trin. 31. E. 1

3. Where *Guardian preſents in Right of the Heir, whether the Heir has Right or no Right*, he, who will have thereof Quare Impedit, ſhall have it againſt the Guardian, and not againſt the Heir. Br. Quare Impedit, pl. 47. cites 7 H. 4. 25. 37.

4. Where the *King or the Pope preſents*, Quare Impedit ſhall be *againſt the Incumbent alone*. Br. Quare Impedit, pl. 47. cites 7 H. 4. 25. 37.

S. P. For there thoſe Patrons cannot be impleaded. Br Quare Impedit, pl. 149. cites 12 H. 8. 12.——Quare Impedit by the *King againſt the Incumbent alone*, who pleaded, which *was found againſt the King*, and it was pleaded in Arreſt, becauſe

becauſe the *Patron was not named in the Writ*; but becauſe the Writ was admitted, it was awarded that the Plaintiff Eat inde ſine die. Br. Quare Impedit, pl. 44. cites 3 H. 4. 25.

5. The *Maſter and Confreers of D. preſented the Maſter*, and the *Maſter and Confreers of E. brought Quare Impedit againſt the Maſter by a ſtrange* Name; and it lay well, and they recovered per Judicium; for it was a void Preſentment. Br. Quare Impedit, pl. 149. cites 12 H. 4. 12.

6. When a Man *diſturbs and dies*, Quare Impedit lies againſt his *Heir and the Incumbent*, becauſe he ſhall make Title and ſave his Poſſeſſion: *But* by ſome, in Quare Impedit when the Patron dies as above, and *the Plaintiff proceeds againſt the Incumbent*, this ſhall not bind the Heir of the Patron, becauſe he is not Party; and there is no Reaſon to give Quare Impedit againſt the Heir, for he does not make any Diſturbance; and alſo the Plaintiff ſhall recover Damages againſt him, which is not Reaſonable where he does not make any Diſturbance. Br. Quare Impedit, pl. cites 9 H. 6. 30.

S. P. for by Forteſcue, Plenarty by 6 Months is no Plea unleſs he ſays of his own Preſentment, and Parſon imparſonee is not in by the Preſentment of any. Br. Quare Impedit, pl. 111. cites S. C.

7. Quare Impedit lies well againſt *Parſon imparſonee*; for the Church is void, having Regard to Strangers. Br. Plenarty, pl. 6. cites 38 H. 6. 20. Per Priſot and Forteſcue.

8. One *Jointenant or Tenant in Common* ſhall not have a Quare Impedit for the Advowſon which they have in Common or in Jointure, if one of them preſent ſolely againſt his Companion. F. N. B. 34. (U)

9. If A. wrongfully by Uſurpation preſent B. and B. is received, and afterwards A. having gained the Patronage *grants the Patronage to R. S.* Walmſley J. thought the *Quare Impedit* ſhall be brought againſt R. S. which Anderſon Ch. J. doubted. 2 Le. 58. Mich. 32 Eliz. C. B. in Caſe of Hall v. Biſhop of Bath.

See (N. c)

[P. c. 3] Of what Thing.

[1] 5. IF there be a Preſentment to the Appropriation by a Stranger, and the Clerk inducted, yet the Patron of the Appropriation cannot have Quare Impedit, becauſe he cannot be put out of Poſſeſſion. 44 E. 3. 33. b.

[2] 6. A Quare Impedit lies of a free Chapel which a Man has by the Patent of the King, if the Sheriff will not put him in Poſſeſſion. 14 H. 4. 11. b.

Watſ. Comp. Inc. 8vo. 430. cap. 22. cites S. C. and Regiſt. Orig. 31. a.

[3] 7. A Quare Impedit lies of an Hoſpital. 18 E. 3. 1.

Br. Quare Impedit, pl. 140. cites S. C. per Brian, that having named a Diſturber and an Incumbent the Writ is good; For the Plaintiff is not diſturbed by C. but by B. and there is no Reaſon to have Action againſt him who does no Wrong to the Plaintiff, and therefore was held good. And Brooke ſays, ſo ſee that the Writ is *good againſt Diſturber and Incumbent, though the Diſturber is not Verus Patronus.*

[4] 8. If it be brought againſt the Incumbent and B. as Patron, it is no Plea for the Incumbent that C. preſented him, upon whoſe Preſentment he was inducted; For he has named a Diſturber, and complained of a Diſturbance by him. 22 E. 4. 44. b. (R. Quære this.)

Watſ. Comp. Inc. 8vo. 430. cap. 22. cites S. C.

[5] 9. A Quare Impedit lies of a Deanry by the King, though it be elective by others. 17 E. 3. 40. adjudged.

(Q. c)

(Q. c) Of what Things, and *for what Cauſes* it may be brought. And what will * be ſufficient Seiſin to maintain it. In what Caſes it is † neceſſary to have Seiſin.

* See (R. c)

† See (S. c)

1. IF a Man creates a Church at this Day, and is diſturbed to preſent, he cannot maintain Quare Impedit, becauſe he cannot allege a Preſentment. Dubitatur. 20 E. 4. 14. b. Contra 21 E. 4. 3. Watſ. Comp. Inc. 8vo. 442. cap. 22. cites S. C.— A Man ſhall not have Quare Impedit if he cannot allege a Preſentment in himſelf or in his Anceſtors, or in another Perſon, from whom he claimed the Advowſon, and that in his Count, unleſs in ſpecial Caſes; As if a Man at this Day * *erect a Church parochial* by a Licence of the King or other Chantry, which ſhall be preſentable &c. If he be diſturbed to preſent to the ſame, he ſhall have a Quare Impedit, without alleging of Preſentment in any Perſon, and ſhall count upon the ſpecial Matter. F. N. B. 33. (H)——Watſ. Comp. Inc. 8vo. 442. cap. 22. cites S. C. And ſo, the Doctor ſays, he ſuppoſes the Law is now taken to be.—— * S. P. if he be diſturbed to preſent at the firſt time, he ſhall have Quare Impedit without alleging Preſentment. 2 And. 50. in pl. 37. in Caſe of Sir Thomas Cecil v. Hall.

2. If Advowſon be granted by Parliament, he ſhall have Quare Impedit Præſentare upon the Matter. 21 E. 4. 3. b. 16 H. 7. 8. Br Quare Impedit, pl. 138. cites 21 E. 4. 1. 3. per Choke.—— Watſ. Comp. Inc 8vo. 442. cap. 22. cites S. C.—— S P. that he ſhall have Quare Impedit without alleging Preſentment before. 2 And. 50 in pl. 37. cites S. C.

In Quare Impedit to preſent to the Church of St. Andrew Wardrobe, Plaintiff declared, that by the Act 22 *Car.* 2. *for re-building London*, it was *enacted, that the Pariſhes of St. Andrew Wardrobe, and St. Anne Black Friars ſhould be united*, and St. Andrew Wardrobe to be the Church to be rebuilt, and the Pariſh Church, and the *Patrons to preſent by Turns*, and the *firſt Preſentation to be by the Patron of the Church the Endowment of which was of the greateſt Value, which was that of St. Andrew*, that 1 July 25 Car 2. the Incumbent of St. Andrew Wardrobe died, and that the King as Patron preſented J. S. which was the firſt Avoidance after the Act; that J. S. died, whereby it belonged to the Plaintiffs (Patrons of Black-Friars) to preſent as in their Turn, and that the Defendant hindred them; The Biſhop claimed nothing but as Ordinary, and Blake the Defendant demurred to the Declaration, for that it did *not appear that the Plaintiffs, or any by whom they claimed had preſented to, or ever were in Poſſeſſion of the* * *Church of Black-Friars*; and that ſuch a Preſentation muſt always be alleged in a Qua. Imp. As to this it was ſaid, That this being an Union by Act of Parliament, which appoints that the Patrons ſhall preſent by Turns, and that the greater Value ſhould preſent firſt, this was not neceſſary in this Caſe; to which the Court ſaid, That the Act did not intend to reſtore a Title to one who had loſt it by Uſurpation, but to leave the Title as it was before; and perhaps here might have been Uſurpation before this Act made; and if ſo, then the Uſurper, and not the Plaintiffs, is Patron within the Act till they had regained their Right by a Writ of Right of Advowſon; and thereupon it was adjourned to be further argued But Judgment was afterwards given for the Plaintiff upon this Point, and affirmed in Error in B. R. but reverſed in the Houſe of Lords on a Writ of Error. 3 Lev 435. Hill. 7 W. 3. C. B. Reynoldſon & al. v v Biſhop of London and Blake.—— *[The Word is (Vicarage) but in this Caſe of Union by Act of Parliament, and the Rectory being appropriate, the Court ſaid, they would intend it a Church now within the Meaning of the Act, and therefore I thought it better here to uſe the Word (Church)]

3. If the King be intitled to the Advowſon by Office, he ſhall have Quare Impedit without Preſentation. 21 E. 4. 16 H. 7. 3. Br. Quare Impedit, pl. 138. cites 21 E. 4. 1. 3. and this as well to an Advowſon in Groſs as to an Advowſon Appendant, and by all the Juſtices the King is Patron by the Office till it be traverſed in Chancery.——Watſ. Comp Inc. 8vo. 442. cap. 22. cites ſame Caſes.

4. A Recovery in Quare Impedit againſt B. and Damages for two Years becauſe the Church was full of C. is a good Title in a Quare Impedit after the Death of B. without alleging Preſentment. 42 E. 3. 8. b. Watſ. Comp Inc. 8vo. 443 cap. 22. cites S. C.— See (R. c) pl. 3.

5. But in this Caſe, if he had once preſented, and the Church full after the Recovery of his Preſentment, this Recovery is not ſufficient Title. 42 E. 3. 8. b. Watſ. Comp. Inc. 8vo. 443. cap. 22. cites S. C.

*Both Translations are (Disturb'd) but the French is (Dissolv'd.)

6. If an *Abbot* has been *Parson imparsonee* Time out of Mind, and afterwards the Abbey is * *Dissolv'd*, he of whom the Advowson is holden shall present, and if disturbed shall have a Quare Impedit, without alleging of any Presentment in the Count, but shall shew the special Matter. F. N. B. 33. (K)

7. If a *Man be disseised* of a Manor unto which an Advowson is appendant, and the *Advowson becomes void*, the *Disseisee* may present and have a Quare Impedit, *tho' he has not entered* into the Manor. F. N. B. 33. (Q.)

See (Q c)

(R. c) *What* will be *sufficient Seisin* to maintain this Writ.

1. THIS Writ is all in the Possession, and the Presentment is the Possession. 21 E. 4. 2.

2. If my Clerk be Instituted and not Inducted, when it voids again I may maintain this Writ. 38 H. 6. 15. b. by Mark.

* Fol. 377. Watſ. Comp. Inc. 8vo. 443. cap. 22. cites S. C.

3. A Recovery in Quare Impedit, without alleging Presentment, is not * sufficient, because it lies against the Deforceor, who claims nothing in the Patronage. †39 H. 6. 25. b.

——S. P. For he shall recover only the Presentation in this Writ; *but a Recovery in Writ of Right of Advowson*, is a good Title without Presentment, because there he shall recover the Advowson. Br. Quare Impedit, pl. 142. cites S. C.——† F. N. B. 36 (D.)——See (Q c) pl. 4.

Br. Quare Impedit, pl. 80. S. P. cites 21 H. 6. 44. Per Curiam.

4. A Presentment by Lapse to the Ordinary is sufficient Seisin. 9 H. 6. 24. b.

5. A Presentment before Time of Limitation is not sufficient; because it is not triable. 20 E. 4. 15. 42 E. 3. 4. b. Admitted. 17 E. 3. 11. 14. b.

Watſ. Comp. Inc. 8vo. 442. cap. 22. cites S. C.——

6. If an Abbot had an Impropriation Time whereof Memory &c. and after the Abbey is dissolved, this Perpetual Incumbency is not sufficient Seisin for the Patron; for it is not Presentative. Dubitatur. 20 E. 4. 15,

But if the King be seised of an Advowson which has been ever held appropriated, he shall have Quare Impedit without alleging any Presentation. Watſ. Comp. Inc. 8vo. 442. cap. 22. cites 17 E. 3. 10. b. 20 E. 4. 15.

Quare Impedit by the *King*, and *counted how the Bishop of St. Davids was Patron of a Benefice in the Church of A. called the Prebend of G. and that such a Bishop presented to it by Name of Prebend, and after the Bishop by Assent of his Chapter, and the Chapter of A. made it a Treasury by Name of Dignity, and annex'd it to the Bishoprick; and after the King rehearsing the Ordinance, Ratified, Granted and Confirmed* the same Thing accordingly, and that it should be named Treasury accordingly, and that J. B. *Incumbent there died*, by which it voided, and remained void till the *Temporalties came into the Hands of the King by the Death of T. G. Bishop there*, and yet is void, and so it belonged to him to present. And so see that a Voidance which belongs to a Bishop, who dies before he presents thereto, shall afterwards belong to the King, quod nota; and the Defendant *demurr'd, because it was never put in Ure by the Name of Treasury by any Bishop, therefore the King ought to have made Title by Name of Prebend and not of Treasury*; for during the Life of J. B. Incumbent of the Prebend, the Bishop is only a Patron as of Prebend and not as Treasury, till a Bishop has put it in Ure by such Name; & non allocatur; but Writ to the Bishop awarded for the King. Br. Quare Impedit, pl. 42. cites 50 E. 3 26,——Br. Presentation, pl. 10. cites S. C. Br. Alienations, pl. 3. cites S. C—— Watſ. Comp. Inc. 8vo. 442. cap. 22. cites S. C.

7. If a Man presents to a Prebend, and after the Name is changed, yet the said Presentment is sufficient Seisin to maintain a Quare Impedit upon the new Name. 50 E. 3. 26.

8. If

8. If Preſentment be to an Advowſon, and after it is Appropriated, and a Vicarage made in the ſame Church, the Preſentment aforeſaid is ſufficient to have Quare Impedit for the Vicarage, without other Preſentment for the Vicarage. 50 E. 3. 27. Br. Quare Impedit, pl. 42. cites S. C.

9. If Preſentment has been to two Churches, and after they are united, he who is made Patron by the union may have Quare Impedit this, without other Preſentment. 50 E. 3. 27. Br. Quare Impedit, pl. 42. cites S.C.

10. The ſame Law where a Church Parochial is made Collegial. 50 E. 3. 27. Br. Quare Impedit, pl. 42. cites S. C.

—— Pl. 10. in Roll is plac'd after the Sub-Diviſion of (In whom) but it ſeems more properly plac'd before it, as Here it is done.

In whom.

11. The Preſentment of the Grantee of the next Avoidance is ſufficient Title for the Patron in Fee to have this Writ. * 9 H. 7. 23. Co. 5. *Counteſs of North.* 97. b. adjudged. * Br. Quare Impedit, pl. 122. cites S. C.—— Watſ. Comp. Inc. 8vo. 444. cap. 22. cites S. C.——S. P. For he made it in Right of the Grantor, and therefore it ſhall ſerve for him to make Title in Quare Impedit. 5 Rep. 97. b Mich. 39 & 40 Eliz. C. B. the Counteſs of Northumberland's Caſe.——Mo. 456. S. C.———And. 48. S. C.——Cro. E. 518. S. C.—— See pl. 15. infra.

12. It ought to be alleged in the Plaintiff, or in him whoſe Eſtate he has. 21 E. 4. 2. b.

For whom.

13. A Grantee of the Next Avoidance preſents, and after the Heir of the Grantor grants the next Avoidance, the ſaid Preſentment is ſufficient for the Grantee. 9 H. 7. 23. Br. Quare Impedit, pl. 122. cites S. C.—— Watſ. Comp. Inc. 8vo. 445. cap 22. cites S. C.

14. So if Grantee of the Next Avoidance preſents, and after Grantor grants the Advowſon to A. who grants it to B. the ſaid Preſentment is ſufficient for B. in this Writ, without alleging Preſentment in the Grantor or A. Dy. 1. 2. Ma. 106. 18. Watſ. Comp. Inc. 8vo. 445. cap. 22. cites S. C.

15. The Preſentment of Grantee of Next Avoidance is ſufficient for Grantor and his Heirs. Co. 5. 97. Adjudged. See pl. 11. Supra. —— See (U. c) pl. 3. 4. Infra.—In Quare Impedit the Plaintiff *counted that his Anceſtor was ſeiſed* of the Advowſon and his Clerk in, *and after he granted* the Advowſon *to J. S. for Life*, the Church voided, *J. S. preſented*, and his Clerk in, and *J. S. died*, and after *the Church voided*, by which the *Plaintiff as Heir of the Anceſtor preſented*, and the Defendant diſturbed him, and it was held, That *he ſhall allege the one Preſentation and the other*; For the Preſentation of the Tenant for Life does not make Title to the Plaintiff, nor the Preſentation of a Guardian or Termor, *and the Defendant anſwered to the firſt Preſentation, and had Iſſue upon it, and not upon Both*. And per Littleton he ought to anſwer to Both, but the Iſſue ſhall be upon the firſt only, and the Plaintiff ſhall not reply to him to the ſecond Preſentment. Br. Quare Impedit. pl. 129. cites 7 E. 4. 20.

The Books are not directly that Preſentment alleged in the Grantee is not good; But that where a Preſentment is alleged in the Grantor and Grantee, there the Preſentment in the Grantor is only traverſable; For that is the Principal, and the alleging of the Preſentment in Both is not double. Cro. E. 518. Mich. 38 & 39 Eliz. C. B. Fitton v. Hall.

16. If Tenant for Years preſents during his Term, this is ſufficient for him in Reverſion. 22 E. 4. 9. b. Br. Quare Impedit. pl. 139. cites 22 E. 4. 8. Per Choke. Watſ. Comp. Inc. 8vo. 445. cap. 22. cites S. C. ——

17. So if Leſſee for Life preſents. 22 E. 4. 9. b.

18. So if Tenant at Will preſents. 22 E. 4. 9. b.

S. P. and with this agree divers Opinions in 7 E. 4 20. 22 E. 4. 9. b. 16 H. 7. 18. a. 9 H. 7. 23. Brook tit. Quare Impedit 122. 13 Eliz. D. 300. And true it is, that it is generally underſtood in our Books, that where Tenant for Years or for Life, brings Quare Impedit he ought to allege Seiſin in him who has the Fee, and this is regularly true; And yet Preſentations by themſelves ſuffice, as appears 8 H. 5. 10. and this Reſolution does not impugne the ſaid Rule; For Preſentation of the Grantee of the next Avoidance being made in the Title and Right of the Grantor ſhall ſerve as well for him as his own Preſentment and is Tantamount. 5 Rep. 98. the Counteſs of Northumberland's Caſe.

Watſ Comp. Inc 8vo. 445. cap 22. cites S C. — But per

19. So **if a** Guardian **preſents during the Wardſhip.** 22 E. 4. 9. b. **tho' the King be the Guardian. And ſo** 42 E. 3, 4. b. **where a** Manor deſcends, and no Preſentment has been before.

Brian clearly, the Plaintiff in Quare Impedit *ſhall allege a Preſentment in his Anceſtor over and above the Preſentment of the Guardian*, and otherwiſe ill, and therefore ſhall not have Quare Impedit, but it is put to the Writ of Right. Br. Quare Impedit. pl. 139. cites 22 E. 4. 8.

Watſ. Comp. Inc. 8vo. 446. cap. 22. cites S. C. — The King brought

20. So **if the** King **preſents** in Right of his Ward, though the Ward has no Right, **this Uſurpation for the Ward is ſufficient Preſentment for the King, if it becomes void during Nonage, and for the Heir after.** 42 E. 3, 4. **Contra** 21 E. 4. 9. b. **as to the Heir.**

Quare Impedit, and *counted of a Preſentation of J. S. who was ſeiſed in Fee* &c. *and of 2 others in himſelf by the Ward of the Heir of the ſaid J. S.* and that the Church is now void, and it belongs to him to preſent, and the Defendant diſturbed him. Caund. ſaid, *the Clerk alleged by the King to be inſtituted* &c. *by the ſaid J. S was not received nor inſtituted by the Preſentation of J. S.* and it ſeems to be a good Plea; For the 2 Preſentments of the King during Cuſtody did not make Title to him nor to the Heir, without alleging Seiſin by the Preſentment in the Anceſtor of the Heir, or in the Feoffor of the Anceſtor of the Heir, Et adjornatur. Br. Quare Impedit pl. 143. cites 43 E. 3, 4.

Br. Quare Impedit *Fol. 378. pl. 42. cites

21. **A Preſentment** by the Biſhop as Patron **is ſufficient** * for the King **to maintain a Quare Impedit to the Church, when the Temporalties come into the Hands of the King for** Vacancy of the Biſhoprick. 50 E. 3. 26.

S C —— Watſ. Comp Inc. 8vo. 446. cap. 22. cites S. C. —— If the Biſhop dies, and the Advowſon happens void before his Death, the King ſhall preſent unto the ſame by reaſon of the Temporalties, and not the Biſhop's Executors. F. N. B. 33 (R) cites 8 E. 2. Preſentment, 10. 39 E. 3. 21.

Watſ Comp. Inc. 8vo. 444. cap. 22. cites S. C.

22. **A Preſentment** by the Father **is ſufficient** for the Wife of the Son Tenant in Dower **thereof.** 14 H. 4. 12. **admitted**; and alſo for the 2d Baron in Right of the Feme. 14 H. 4. 12.

23. If the *eldeſt Son by* the *firſt Venter* preſents, and dieth without Heir, and afterwards the Church become void, the *younger by the 2d* Venter ſhall not preſent, nor have this Advowſon; But Devon ſaith, If a Man hath *two Daughters by divers Ventors*, and they enter and make Partition to preſent by Turn, and one dieth without Heir, the other Siſter ſhall be her Heir; Quod fuit conceſſum; But after the Partition, if one Siſter hath preſented, and afterwards died without Heir, it ſeemeth her Siſter of the Half-blood ſhall not be Heir unto her. F. N. B. 36. (E)

(S. c) *In what Caſes there needs* a Seiſin.

See (Q. 2)

Watſ. Comp. Inc. 8vo. 442. cap. 22. cites S. C. See (Q. c) pl. 3.

1. **IF the** King be intitled **to an Advowſon** by Office **he ſhall have Quare Impedit without Preſentment,** 21 E. 4. 16 H. 7. 3. **Contra** 17 E. 3. 10. b. 11. 14. **For there a Preſentment is alleged and traverſed, and the Traverſe allowed per Curiam, where the King makes Title by the ſeiſing by Office of the** Poſſeſſion of Prior Alien, and the Preſentment alleged in the Procurator of the Prior.

Watſ. Comp. Inc. 8vo. 442. cap. 22. cites S. C.

2. But 17 E. 3. 14. **b. It is ſaid that if the** Eſcheator ſeiſes **an Advowſon** upon particular Command **to ſeiſe it, the King may have Quare Impedit without alleging any Preſentment; For the** Seiſure makes Title **without more.**

Watſ. Comp. Inc. 8vo. 442. cap. 22. cites S. C. — S. P 2 And. 50, 51. in

3. **If a Man** recovers in Writ of Right **of Advowſon,** and has Execution, **he may have Quare Impedit without alleging any Seiſin; For the Recovery ſufficiently enough affirms his Right.** 14 E. 2. **Quare Impedit.** 171. **Adjudged.**

pl. 37.

pl. 37. in the Caſe of Sir Tho Cecil v. Hall. —— A Man ſhall have Quare Impedit upon a *Recovery by Default in Writ of Right of Advowſon* without alleging any Preſentment; by all the Juſtices. Br. Quare Impedit. pl. 138. cites 21 E 4. 1. 3.—— And where *Colluſion* is *found againſt an Abbot in Recovery of Advowſon*, the King ſhall have Quare Impedit without alleging Preſentment; Per Choke J. Br. Quare Impedit. pl. 138. cites 21 E. 4. 1. 3. —— See (Q. c) pl. 4 & (R. c) pl. 3.

4. 17 E. 3. 10. It is ſaid that he may allege Seiſin in Recovery by Preſentment; But it is not traverſable. Warſ. Comp. Inc. 8vo. 443. cap. 22. cites ſame Caſes and 20 E. 3. 15.

5. If the King ſeiſes an Advowſon, which has been held always in proper Uſe, he ſhall have Quare Impedit without alleging any Preſentment. 17 E. 3. 10. b.

6. If the King has Cauſe to preſent by the Temporalties of the Biſhop, he ſhall not have Quare Impedit without alleging Seiſin by Preſentment. 17 E. 3. 40.

7. He who has no Right ſhall not have Quare Impedit without Preſentment. 17 E. 3. 40.

8. If a Church be void at this Day, and the *Patron preſents*, and is diſturbed, he ſhall have Quare Impedit, tho' he *had never Poſſeſſion before*. Br. Quare Impedit pl. 138. cites 21 E. 4. 1. 3. Per Catesby. *So of an Advowſon appropriate*, and after the *Abbey is diſſolved*, the *Donor* of the Advowſon *ſhall have Quare Impedit*. Ibid.

9. If the *King recovers* by Quare Impedit, and afterwards *ratifies the Eſtate of the Incumbent*; yet at the next Avoidance the King ſhall preſent, becauſe his Recovery and Judgment for him was not executed. F. N. B. 34. (F) cites T. 9. E. 3. F. N. B. 34. (F) in the new Notes there. (d) ſays, See a good Caſe that accords herewith. 18 E. 3. 21. And ſee 9 E. 3. 20.

(T. c) What ſhall be ſufficient Seiſin. See (Q. c) (R. c)

[1.] THIS Writ is all in the Poſſeſſion, and the Preſentment is the Poſſeſſion. 21 E. 4. 2.

(U. c) Quare Impedit. Seiſin. *By whom the Preſentment being* ſhall be ſufficient. See (R. c)

1. THE Preſentment ought to be alleg'd in the Plaintiff, or in him whoſe Eſtate he has. 21 E. 4. 2. b.

2. A Preſentment in him who grants the Advowſon to B. a Purchaſor, is ſufficient in a Quare Impedit brought by B. Co. Magna Charta. 356. b.

3. A Preſentment alleg'd in the Grantee of the next Avoidance is ſufficient in this Writ. Co. 5. *Counteſs of Northumberland*. 97. b. Adjudg'd. King *Ed* 6. was *ſeiſed of the Advowſon* of the Church of Chedſay, which was Parcel of the Poſſeſſions of the late Counteſs of Sarum, (attainted of Treaſon by Parliament Anno 31 H 8.) *as of Fee*, and by his Letters Patents he *granted the next Avoidance*, Nomination, Right of Patronage, and free Diſpoſition of the ſaid Church to A. and B. Conjunctim & Diviſim, *ita ut bene liceret eiſdem ad Eccleſiam prædictam* cum primo & proxime vacare contigerit *Præſentare N. M.* &c. At the next Avoidance *they preſented the ſaid N. M. who was* admitted and *inſtituted*, and afterwards *the King granted the Advowſon in Fee to the Duke of Somerſet, and he granted it over, before his Attainder*, to Sir John Thynn, and the *Church became void*; and whether Sir John Thynn might make to himſelf a good Title in a Quare Impedit by the Preſentment aforeſaid, or not, without alleging a Preſentment in the King, or any other, by whom he claimed Quare bene. D. 105. b. pl. 18. Mich. 1 Ph. & M. Sir John Thynn v. Earl of Pembroke.— The Reporter cites 9 H 7. in Quare Impedit, and ſays, He thinks that, by the better Opinion, he may, but that it is a Queſtion there, if the Grantee of the Advowſon in Fee ought to ſhew the firſt Deed of Grant of the next Avoidance, or not? —— Ibid. Marg. pl. 18. ſays, It is void, and that it was ſo adjudg'd, Trin. 31 H. 8. Rot. 100. in the Caſe of Sir Godfrey Fulgleam v. Sir William Hollis. —— See (R. c) pl. 11, 15.

* Fol. 379. * 4. A Presentment alleg'd in a Lessee for Life or Years is sufficient Title in this Writ. Co. 5. 97. b. Co. 6. *Bred.* 57. b. 9 H. 7. 23.

Br. Quare Impedit, pl. 138. cites 22 E. 4. 8. Per Choke. —— See (R. c) pl. 16, 17, 18.

Br. Quare Impedit, pl. 138. cites 22 E. 4. 8 Per Choke. —— See (R. c) pl. 18.

5. So a Presentment alleg'd in a Tenant at Will is a sufficient Title in this Writ.

6. So a Presentment alleg'd in a Tenant in Dower or Tenant by the Courtesy is sufficient Title in this Writ. Co. 5. 97. b.

7. So a Presentment alleg'd in Tenant by Statute Merchant, Staple, or Elegit, is sufficient Title in this Writ. Co. 5. 97. b.

Watf. Comp. Inc. 8vo 446. cap. 22. cites S. C. 8. The Presentment of the Procurator of an Abbot in Right of the Abbey is sufficient Seisin for the Abbot. 17 E. 3. 14. Admitted 60, 76.

Watf. Comp. Inc. 8vo. 446. cap. 22. cites S. C. 9. So this Presentment by the Procurator shall be sufficient for the King, he having the Possessions for Cause of War, the Abbot being an Alien. 17 E. 3. 10, 14. Admitted 60. Adjudged 76.

Br. Quare Impedit, pl. 88, cites 14 E. 3. 37. 10. So a Presentment alleg'd by the Guardian in Chivalry or Socage is sufficient Title in this Writ. Co. 5. 97. b.

—— See (R. c) pl. 20.

For there is no other Entry into an Advowson, but to present, and he has no other Remedy; for he cannot have Writ of Right of Advowson, because he cannot allege Seisin in himself or his Ancestor. Br. Quare Impedit, pl. 70, cites S. C. 11. Upon an Alienation of an Advowson in Mortmain, if the Lord, of whom it is held, at the next Avoidance brings Quare Impedit, it is sufficient for him to allege a Presentment in his Tenant, who alien'd it in Mortmain. 21 E. 3. 27. b.

12. If a Lessee for Life or Years presents, and his Clerk instituted, it is sufficient Title for him in Quare Impedit at the next Avoidance without alleging any Presentment by the Lessor. Co. 5. *Specot* 57. b. Adjudg'd. Co. 5. *Count North.* 98. 11 H. 7. 29.

13. If the King be seised of a Manor in Fee, to which an Advowson is appendant, and the Church voids, and a Stranger usurps, and after the King grants the Manor and Advowson in Fee to J. S. as he may, because the said Usurpation is not any Usurpation to the King as to the Inheritance; and after the Church voids, J. S. shall have his Quare Impedit, being disturbed, and make his Title by the last Presentment of the King, without making mention of the Presentment of the Stranger. Hobart's Reports 189.

14. If *two Jointenants* be of an Advowson, and the *one presents* to the Church, and his Clerk is admitted and instituted, this in respect of the Privity shall not put the other out of Possession, but if that Jointenant who presents *dies*, it shall serve for a Title in a Quare Impedit brought by a Survivor. Co. Litt. 186. b.

(X. c) *At what Time* the *Presentment being* shall be sufficient.

Watf. Comp. Inc. 8vo. 443. cap. 22. cites S. C. 1. A Presentment before time of Memory is not sufficient, because it is not triable. 17 E. 3. 11. 14. b. 20 E. 4. 15. 42 E. 3. 4. b. admitted.

2. But

2. But in ſuch Caſe he may allege the Preſentment to be within Time of Memory, and then it is good; For the time is not traverſable. 17 E. 3. 14. b. Watſ. Comp. Inc. 8vo. 443. cap 22. cites S. C.

(Y. c) Quare Impedit. *At what Time* it *lies.*

[1.] A Quare Impedit lies againſt the Patron after 6 Months Plenarty of his Incumbent. 18 E. 3. 2. 13. b.

2. If *a Man gives Land and Advowſon appendant in Tail*, and the *Tenant in Tail ſuffers Uſurpation which continues by 6 Months and dies*, the Iſſue in Tail ſhall not have Quare Impedit, nor Aſſiſe of Darrein Preſentment till the next Avoidance. Br. Quare Impedit, pl. 141. cites 46 Aſſ. 4. per Finch. Br. Quare Impedit, pl. 148. cites S. C.——*But if the Anceſtor ſuffers a Man to appropriate, and dies after the 6 Months paſt*, and after the Heir ſuffers other 6 Months, he may preſent, and may have Quare Impedit or Darrein Preſentment. Ibid. ——Br. Quare Impedit, pl 148. cites S. C For upon Appropriation the Church remains void to him who has Title.——— Where a Man makes Diſturbance, and the *Diſturber appropriates the Advowſon*, there the Party may have Quare Impedit againſt the twentieth Abbot who is in after the Appropriation, and forty Years after; for all thoſe are only as one and the ſame Incumbent, and is no Plenarty which puts a Man from his Action, Br. Quare Impedit, pl. 10. cites 33 H. 6. 11.

3. The *King* may have Quare Impedit *at any time during the Lives of the Patron and Incumbent, or of the Incumbent only*, notwithſtanding its being after the 6 Months; For Nullum Tempus occurrit Regi; Quod Nota. Br. Quare Impedit, pl. 39. cites 47 E. 3. 4.

4. Quare Impedit by the *King*, who *counted, that T. held the Manor of D. of him in Capite with this Advowſon appendant, and preſented, and after the Church voided, and after he aliened in Mortmain, and the Biſhop of R. preſented, and his Clerk admitted, inſtituted and inducted, and the Biſhop died, and the King within the Year brought Quare Impedit againſt the Incumbent alone*, and well per Judicium; For he may plead againſt the King by the Statute, and alſo the Biſhop, who now is, was no Diſturber, ſo that the Action does not lie againſt him, and it lies well within the Year though the other has gained Poſſeſſion by Preſentation, and this becauſe the *King in this Caſe cannot have Writ of Right* becauſe he *has no Right, but only a Title, by reaſon of Alienation in Mortmain*, ſo that if he comes within the Year it ſuffices. Br. Quare Impedit, pl. 40. cites 47 E. 3. 11. Br. Droit de Recto, pl. 5. cites S. C.——*So* it was admitted there *of a common Perſon* if he comes within the Year *after the Alienation in Mortmain*, Uſurpation within the Year ſhall not grieve him. And ſo it ſeems that the King by *Uſurpation not avoided by any Action* may be out of Poſſeſſion as well as a common Perſon, and ſo is the beſt Opinion there; and therefore it ſeems that the one Uſurpation within the Year cannot be an Interruption, and a Deſcent cannot toll the Entry of the Lord who enters for Mortmain; For he has no Right of Entry, but only a Title of Entry, which may be taken at any Time within the Year. Br. Quare Impedit, pl. 40 cites 47 E. 3. 11.

Quare Impedit of an Advowſon in groſs, the Plaintiff *counted, that J. N. was thereof ſeiſed and preſented* &c. *and held the Advowſon of him; and after aliened to the Dean and Chapter of H. by which he preſented by the Statute of Mortmain*, and it is yet within the Year, and the *Defendant ſaid, that the Church was full by 6 Months before the Writ purchaſed of his own Preſentment*; Judgment of the Writ; and becauſe it is half a Year after the Alienation, therefore the Writ lies well, per Cur. Br. Quare Impedit, pl. 70. cites 21 E. 3. 27.——Br. Mortmain, pl. 13. cites S. C.

5. Quare Impedit by R. H. *againſt* 5. and *three of them brought Quare Impedit againſt the Plaintiff of younger Date*, by which *R. H. prayed, that all may be determined upon his Writ of elder Date*, and that the other may be diſcontinued or nonſuited, and then it was not much denied; but afterwards, fol. 56. it was agreed, that if they cannot agree to diſcontinue the laſt Writ that then each ſhall anſwer the other in both Writs; quod nota. Br. Quare Impedit, pl. 153. cites 11 H. 6. 23 & 56. Quare Impedit by J. A. and W. P. againſt B. B. and others, the Plaintiffs counted, and the Defendants anſwered, and ſo to Demurrer; and after the ſame Defendants *ſaid, that they had another Quare Impedit againſt the Plaintiffs, and prayed that they may anſwer thereto*; and per Brown, *they ſhall proceed upon the Quare Impedit of the firſt Date, and this ſhall make an End of all*; for otherwiſe there may be Inconvenience; for it may be

be, that the one may be found for the Plaintiffs, and the other with the Defendants, where it is all of one and the ſame Preſentation to one and the ſame Church; and Newton accordingly, and no Inconvenience to any Party where they plead upon the Writ of elder Date. Br. Quare Impedit, pl. 79. cites 19 H. 6. 68.——*For* where *A. brings Quare Impedit againſt B. and his Incumbent*, and B. e contra againſt A. and they plead upon the firſt Writ, and the other ſet aſide, there *if the Title be found for A. he ſhall have Writ to the Biſhop to inſtitute his Clerk, and to ouſt the other* if this Recovery be *within the 6 Months*, and no Miſchief to the Clerk of the Defendant; becauſe he was named in the Writ, and may have Anſwer, *and if the Clerk of A. was in at the Time of the Recovery he needs no Writ to the Biſhop, but ſhall recover Damages for the Diſturbance*, and *if B. recovers againſt A.* there *the Clerk of A. ſhall be ouſted if* he was in *by his own Suit, pending the Writ*; but if he was in at the time of the Writ purchaſed, he ſhall be ouſted; For it was the Folly of the Defendant that he had not pleaded that the Church was full of the Preſentation of A. the Day of the Writ. Ibid.——*But* becauſe the *Plaintiff did not aver that the ſecond Writ was of the ſame Preſentation of which he brought his Writ*, therefore *each was awarded to anſwer to the other's Action.* Ibid.

6. In a Quare Impedit for the King; though thr *Defendant has a Writ to the Biſhop againſt the King*, the King may have *a new Quare Impedit* againſt him of the ſaid Avoidance, and *make other Title.* F. N. B. 35. (P)

Note, in ſuch Caſe the Profits are to the Prior, and yet the Freehold is in the Abbot

7. If the *Diſturber preſent two or three times within* the 6 *Months*, yet a Quare Impedit lies againſt the Diſturber upon the firſt Preſentment, if he purchaſe the Writ within the 6 Months. F. N. B. 35. (Q.) F. N. B. 36. (Q) in the new Notes there (a) cites 20 E. 3. Non-ability; 9, 14 H. 4. 10. adjudged.

For the Inſtitution and Induction thereupon are merely void, and ſo the Church was never full of the Perſon of ſuch Clerk. Watſ. Comp. Inc. 159. cites Hob. 167.

8. The rightful Patron may have a Quare Impedit *after the* 6 *Months* againſt the Incumbent of an Uſurper that is *in by Simony*, and in ſuch Caſe Plenarty for 6 Months is no Plea. Per Cur. Noy. 25. in Caſe of Winchcomb v. Pulleſton.

9. 1 *Mar.* 1 *Parl.* 2 *Seſſ. cap.* 5. enacts, that *that the Statute of* 32 *H.* 8. *cap.* 2. (of Limitations) *ſhall not extend to a Writ of Right of Advowſon, Quare Impedit, Aſſiſe of Darrein Preſentment, Jure Patronatus &c.*

(Y. c. 2) Quare Impedit. *Where* it ſhall be *brought.*

S. P. F. N. B. 33. (C) in the Notes there (e)

1. QUARE Impedit by *the King againſt the Biſhop* of Sarum of *the Prebendary* of Horton, and *counted of a Voidance by reaſon of the Temporalties of the Biſhop being in the Hands of the King, and* that the Prebend voiding, the King preſented, and he diſturbed, and counted *that ſuch a Biſhop preſented ſuch a Prebendary who died*, and ſo it is void &c. and it was *brought in Wiltſhire where the Cathedral Church was, and not in the County of S where the Body of the Prebend, viz. the Manor of Horton, was*, which made the entire Prebend, and yet the Writ awarded good; Quod Nota. Br. Quare Impedit, pl. 68. cites 21 E. 3. 50.—— But Fitzh. Brief 325. Anno 15 E. 3. is contra, but it is better here, as it ſeems; For Quare Impedit lies where the Church is.

* Quare Impedit was brought *in the County of Hereford of an Advowſon in Wales*, and lay well. Br. Quare Impedit, pl. 16. cites 35 H. 6. 30.——S. P. that it ſhall be brought in the County adjoining; per Forteſcue. Br. Quare Impedit, pl. 109. cites 36 H. 6. 33. And Brook ſays, the Reaſon is ſaid elſewhere to be in as much as the Lords there *have no Authority to write to the Biſhop.*——S. P. Co. Litt. 134. b. Neither ſhall Conuſance be granted in a Quare Impedit, becauſe the Inferior Court cannot write to the Biſhop.

2. Quare Impedit does not lie in *Guernſey*, nor in * *Wales*, *nor* in other *Royal Franchiſes, but* it was admitted, that Quare Impedit lies *in Durham.* Br. Quare Impedit, pl. 152. cites 11 H. 6. 3.

Quare Impedit of the *Archdeaconry of St D. in Wales* was brought *in the County of Hereford as in the County next adjoining* to the Benefice; Quod Nota; and the *King made Title by reaſon of the Poſſeſſions of the*

the Biſhop of St. D. being in his Hands, and ſo ſee that the Biſhop was Patron of the Archdeaconry. Br. Quare Impedit, pl. 100. cites 24 E. 3. 42.

3. The King may ſue this and every other Writ in what Court he pleaſe. F. N. B. 32. (E.)

(Z. c) Quare Impedit. *How* it ſhall be. In what Caſes it ſhall be *Præſentare*.

1. IF the Sheriff will not put the Patentee of the King of a free Chapel in Poſſeſſion, the Patentee ſhall have Quare Impedit quod permittat ipſum Præſentare. 14 H. 4. 11. b. Watſ. Comp. Inc. 8vo. 565. cap. 30. cites S. C.—

2. If a Man diſturbs another to collate to a Benefice, yet the Writ ſhall be good if it be Præſentare. 17 E. 3. 64. adjudged. Fol. 380.

S P. *And in his Declaration he ſhall ſhew the ſpecial Matter.* Br. Quare Impedit, pl. 156. cites F. N. B fol. 32 & 33.

3. In Quare Impedit the Plaintiff made Title, becauſe *Fine was levied between J. N. and the Abbot of B. of the Advowſon*, and the ſame *Abbot granted* by the ſame Fine, *that J. N. and his Heirs at every Avoidance ſhall name to him his Clerk, and he ſhall preſent him over to the Biſhop*, and *alleg'd Seiſin* accordingly, and that the Church is void, and he named a Clerk to the * Abbot, and he would not preſent him to the Biſhop, and brought Quare Impedit, which was Quod permittat ipſum Nominare Clericum &c. where it ſhould be Præſentare Clericum; and therefore the Writ was abated. Br. Quare Impedit, pl. 56. cites † 4 H. 4. 10. 11. Br. Quare Impedit, pl. 144. cites 14 H. 4. 11. S. C.——— S P. F.N.B. 33. (B) ſays that the Writ ſhall be Quod permittat ipſum præſentare

&c. and in his ‡ Count he ſhall ſet forth the ſpecial Matter, and it ſhall be good. F. N. B. 33. (B)—— See accordingly 1 H. 5. 1, 2. 4 E. 3. 69. 21 H. 6. 17. a. and he ſhall have a Writ to the Biſhop to admit the Preſentee whom he has named to another, whether the Writ be brought againſt him who had the Preſentation or againſt a Stranger, yet ſee 24 E 3. Quare Imp 27. and 2 R. 3. Quare Imp. 102. that it lies not for him who has only the Nomination. F. N B 33. (F) in the new Notes there. (c)

‡ F. N. B. 33. [B] in the new Notes there. (d) ſays, See accordingly 22 E. 4. 22. a. 14 E. 4. 2. b. and 14 H 4. 11. the Writ Quod permittat nominare was abated by Award in the like Caſe.——— * Orig. is (Eveſque.)——† It ſhould be 14.

4. If a *Biſhop be diſturb'd to preſent* where he ought to make Collation, the Writ ſhall be Quod permittat ipſum præſentare &c. and he ſhall count upon the Collation. F. N. B. 33. (D.) F. N. B. 33. (D) in the new Notes there. (a) cites 16 E. 3. Brief 660. Raſt. Entr. 501. 17 E. 3. 64.

5. The King ſhall have a Quare Impedit of the *Sub-Deaconry of York*, which voided when *the Temporalties of* the *Archbiſhoprick* were *in the King's Hands*, and the Writ ſhall be Quod permittat eum præſentare; and yet the King ſhall give this Sub-Deaconry by his Letters Patents. F. N. B. 34. (G.)

(A. d) Quare Impedit. How it ſhall be. *In what Caſes* the Writ ſhall be *Ad Eccleſiam.*

1. IF a Quare Impedit be brought of a Chapel, the Writ ſhall not be Quod permittat præſentare ad Eccleſiam, but ad Capellam. 8 H. 6. 37. Curia. And becauſe the Writ was Ad Eccleſiam, the Opinion of

the Court was, that the Writ ſhould abate. Br. Quare Impedit, pl. 77. cites S. C.——If the King be diſturbed to collate by his Letters Patent unto his Free Chapel, he ſhall have a Quare Impedit, and the Writ ſhall be Quod permittat præſentare &c. ad Præbendam in his Free Chapel &c. F. N. B. 33. (E)

(E)———F. N. B. 33. (E) in the new Notes there (b) cites 16 E. 3. Brief 660.———And 13 H. 4. Brief 870. where Eccleſia ſhall be intended a Parochial Church.

Br. Quare Impedit, pl. 156. cites F. N. B. 32 & 33.

2. **If the Clerk of a** Donative **be diſturb'd, the Patron may have a Quare Impedit Quod permittat ipſum præſentare ad Eccleſiam &c. and declare the** ſpecial Matter in his Declaration. **Co. Litt. 344 cites H. 1 Jac. B. R. Rot. 601. between** *Fairchild and Gayer*, **in Treſpaſs. Reſolved for the Rectory Parochial Donative of St. Burien in Cornwall.**

Per Choke Ch. J. in Caſe of *two Patrons and two Incumbents*, (as here) if either of the Patrons be diſturb'd, he may have Writ either

3 Where 2 *or* 3 *Patrons* are ſeis'd of an Advowſon to *preſent by Turns*, the Qua. Imp. ſhall be *Preſentare ad Eccleſiam*; for it is but one Church. But where the Church is divided, and there are 2 ſeveral Patrons and 2 *ſeveral Incumbents* of the ſame Church, ſo that a diſtinct Part of the Church and Tithes belong to each, in ſuch Caſe the Quare Impedit ſhall be Præſentare *ad Medietatem &c. Eccleſiæ*. So in Caſe of a *Conſolidation* of 2 or 3 Churches into one, and the Patrons now preſent by Turns, ſo as one Incumbent poſſeſſes the whole, the Preſentation ſhall be Ad Eccleſiam. 10 Rep. 136. Trin. 10 Jac. C. B. Smith's Caſe.

Præſentare ad Medietatem Eccleſiæ, or Præſentare *ad Eccleſiam*; for Quoad him it is a Church. 10 Rep. 136. b. in Smith's Caſe.

4. In Quare Impedit for the Vicarage of B. in Devon, it was objected upon a Demurrer, That there is a *Variance* between the Writ and the Count, the *Writ* being *Quod permittat eum præſentare ad Vicariam Eccleſiæ de B.* and the Concluſion of the *Declaration is* Quod ad ipſum E. (the Plaintiff) *ad Eccleſiam prædictam ſic vacantem &c. pertinet præſentare* &c. So that the Writ is Quod permittat &c. præſentare ad Vicariam, and the Declaration is Ad Eccleſiam pertinet præſentare. But to this it was anſwered, and ſo reſolved per Cur. That *Omnis Vicaria eſt Eccleſia*, and that it is ſo held expreſsly in ſeveral Books, and therefore no Variance in Subſtance but in Form only; beſides, this was not ſhewn for Cauſe of Demurrer, for the Cauſe ſhewn was Want of Profert, and the Precedents are as in this Caſe; and ſo Judgment for the Plaintiff. Whereupon Defendants brought a Writ of Error, and a Bill in Chancery &c. Carth. 315. 316. Trin. 6 W. & M. Reynell v. Long.

5 The Act of 22 *Car.* 2. *for Rebuilding London, enacted that the Pariſhes of* St. Andrew Wardrobe and St. Anne Black-Fryers *ſhould be united*, and that *the firſt Preſentation ſhall be by the Patron of the* (Church) *whoſe Endowment is of the greateſt Value.* Now the Truth was, that *St. Anne Black-Friers was a Vicarage.* And upon a Quare Impedit brought it was among other Things ruled by the Court, That tho' Eccleſia and Vicaria are different Things, yet it appearing upon the whole Record that the *Rectory of Black-Fryers is Appropriate*, the Vicarage of Black-Fryers ſhall be a Church within the Intent of the Act. 3 Lev. 435. 436. Hill. 7 W. 3. in C. B. Reynoldſon & al. v. Biſhop of London and Blake.

6. There *needs not the Name of the Saint*, as Ad Eccleſiam de Sancti *M.* de W. except there be more Churches in the ſame Vill. F. N. B. 32. (E) in the new Notes there, cites 9 Eliz. Dyer 259. 13 H. 4. 872.

* And note, Such Writ was at the Common Law. F. N. B. 32. (H) in the new Notes there. (a) cites 14 H. 3. Quare Impedit 183.

7. If a Man be diſturb'd to preſent unto a Parſonage, then the Writ ſhall be * Præcipe &c. Quod permittat ipſum preſentare &c. *ad Eccleſiam* &c. for the Word Eccleſia is always intended a Parſonage. And if it be a Vicarage, then the Writ is Quod permittat ipſum præſentare *ad Vicariam*. And if it be *a Prebend*, then *Ad Prebendam*, and if a Chapel *Ad Capellam*; and ſo he ought to † name the Advowſon as it is &c. F. N. B. 32. (H.) cites 8 H. 6. 22.

ad Capellam. 2 H. 3. Grants 89. ad Vicariam.——† In a Quare Impedit Preſentare ad Eccleſiam, it is a good Plea to the Writ that it is but a Chapel, for † Eccleſia ſhall be intended a Pariſh-Church. F. N. B. 32. (H.) in the new Notes there (b) cites 5 E. 3. 60. 22 E. 3. 2. a. 12. a. 8 H. 6. 32. a 3[illegible]. a. 13 H. 4. Brief 870——‡ S. P. in F. N. B. 33 E in the new Notes there (b) cites 16 E. 3. Brief 660. and 13 H. 4. Brief 870.

8. There

8. There is another Form of Writ Quod permittat ipſum præſentare *ad Eccleſiam Domus Sancti* Martini Briſtol. quæ vacat. &c. and ſo of an Hoſpital and the like. F. N. B. 33. (G.) cites Lib. Entr. 506.

(B. d) Quare Impedit. *How* it ſhall be *brought.*

1. A WRIT **may be brought** Quod permittat ipſum præſentare ad Cantariam, **without ſaying** Perpetuam **Cantariam.** 17 E. 3. 12.

2. So **he need not ſay Ad perpetuam** Vicariam. 17 E. 3. 12.

3. A Quare Impedit lieth of a Priory, or of an Abbey, and the Writ ſhall be *Quod permittat ipſum preſentare ad Prioratum ſeu Abbatiam* &c. F. N. B. 33. (F.) cites the Book of Entries 59. and 18 E. 3. Quare Impedit 151. accordingly.

(B. d. 2) Quare Impedit in general. At *Common Law* or *by Statute.*

1. QUARE Impedit and Darrein Preſentment *complains of Chattle only*, viz. the preſent Avoidance. Jenk. 13. pl. 23.

2. Quare Impedit *was by the Common Law*, but it was only *upon* a Preſentment, viz. Induction; but if the Incumbent was to be inducted, then at the Common Law a Writ of *Right of Advowſon* only lies. Per Popham. Brownl. 166. Trin. 4 Jac. the King v. Matthews.

3. In Quare Impedit *both Plaintiff and Defendant are Actors* one againſt another, and therefore the Defendant may have a *Writ to the Biſhop* as well as the Plaintiff, which he can't have without a Title appearing to the Court. Vaugh. 58. Trin. 21 Car. 2. the King v. Jervis & al.

4. If the *Church* is *full* of the Defendant *by Inſtitution*, then it is a Quare Impedit within the Statute; otherwiſe it is a Quare Impedit at Common Law. Skin. 25. Mich. 33 Car. 2. C. B. Holt v. Holland.

(B. d. 3) Quare Impedit. *In what Caſes* it *lies.*

1. IF the Advowſon be *in Groſs*, the *Tenant in Tail* may have Quare Impedit. Br. Quare Impedit, pl. 31. cites 43 E. 3. 24.

2. Where I *grant one Part of an Advowſon to S.* and *another to W.* and the *third to F. reſerving the fourth* Avoidance to my ſelf, in this Caſe Quare Impedit does not lie; for the Advowſon is one entire Thing, and we cannot join in Action; and therefore, if we cannot agree in Preſentment, the Biſhop ſhall have it by Lapſe; but of Coparceners, if they cannot agree, the Eldeſt ſhall have the Preſentment, Br. Quare Impedit, pl. 10. cites 33 H. 6. 11.

3. Note *when there is no Patron, As where the Prior is Prieſt, and is admitted to his own Benefice*; Or where *my Advowſon is alien'd in Mortmain, and appropriated* to a Religious Houſe, and the like; in thoſe Caſes, I may have Quare Impedit, and the Plenarty by 6 Months is no Plea. Br. Plenarty, pl. 10. cites 14 H. 8.

4. *Collation*

4. *Coltation by* 6 *Months* does not *toll Quare Impedit*, where the Plenarty is by ſuch Collation, for the Statute of Weſtminſter 2d. requires Preſentation in this Caſe. Jenk. 281. pl. 7.

5. A Man can't have Quare Impedit and *Darrein Preſentment too*, but on the Return of the Quare Impedit, the Darrein Preſentment brought after ſhall abate. But Per Hobart, if he had brought *another Quare Impedit* it had been well; and ſo it was received in the Earl of Bedford's Caſe. And Per Hutton, W. 2, 5, proves that he ſhall not have both. Noy 18. Mich. 15 Jac. C. B. the Village of St. Andrew's v. the Archbiſhop of York and the Counteſs of Shrewsbury.

6. If A. a *Spiritual Man has the Preſentation, and B. a Layman the Nomination*, if *B. nominates to A.* the Spiritual Man, *C. a Clerk to be preſented over, and A. doth ſo* accordingly, if *before C's Admiſſion B. nominates another* to be likewiſe preſented, which *A. refuſeth* to do, becauſe *A.* hath preſented one already by his Nomination; B. ſhall not maintain any Quare Impedit againſt the Preſentor for ſuch Refuſal; becauſe A. is Patron, and being a Spiritual Man he cannot change his Preſentation already made. Dod. of Adv. 65, 66. Lect. 12.

(B. d. 4) Quare Impedit. * *Proceſs* and *Proceedings*.

* The *Proceſs* in this Action are *Summons, Attachment, and Diſtreſs peremptory*, by the *Statute of Marlbridg* 13.

1. 52 *H.* 3. cap. 12. ENACTS, That *in Aſſiſes of Darrein Preſentment, and in a Plea of Quare Impedit, of Churches vacant,* † *Days ſhall be given, from* 15 *to* 15, *or from* 3 *Weeks to* 3 *Weeeks, as the Place ſhall happen to be near or far.*

The Sheriff muſt ſummon the Defendant by good Summoners, and return their Names upon the Original; The *Writs* are *returnable from* 15 *Days to* 15 *Days*; The *Summons* on the firſt Writ may be made *at the Church-Door, or to the Perſon* of the Defendant; and altho' a *Nihil* be *returned* upon the firſt Summons, *Attachment and Diſtreſs*, yet if the *Defendant make Default* upon the Diſtreſs, a *Writ ſhall go to the Biſhop* on the Title made by the Plaintiff. Brownl. 158. —— See the Caſe of Williams v. Blower & e contra.

This Act extendeth not to a Writ of Quare non admiſit nor to an Incumbravit, but only to the Aſſiſe of Darrein Preſentment and Quare Impedit, and the Reaſon thereof is for fear of the Lapſe. 2 Inſt. 124.

† By Aſſent of Parties a longer Day may be given than is preſcribed by this Act, but that Aſſent muſt be enter'd of Record. And it is to be obſerved, That by the Common Law great Delays be diſallow'd in four Kinds of Actions viz. In all Writs of Dower, Quare Impedit, Aſſiſe of Darrein Preſentment, and Aſſiſe of Novel Diſſeiſin, and therefore no Protection ſhall be allowed, or Eſſoin de ſervitio Regis ſhall be caſt in any of them. 2 Inſt. 124.

At the Common Law, in a Quare Impedit, the Proceſs was Summons, Attachment, ‡ and Diſtreſs Infinite, which was miſchievous in reſpect of the Lapſe; Now it is provided, That if he appear not at the Grand Diſtreſs, Judgment ſhall be given for the Plaintiff, and a Writ to the Biſhop awarded. 2 Inſt. 124. —— ‡ S. P. Br. Quare Impedit, pl. 152, cites 11 H. 6. 3. And the Plaintiff ſhould not have Writ to the Biſhop 'till the Defendent came, but contra now by the Statute.— S. P. Brownl. 158.

*And in a Plea of Quare Impedit, if the Diſturber come not at the firſt Day that * he is ſummoned, nor caſt no Eſſoin, then he ſhall be attached at another Day; at which Day, if he come not, nor caſt no † Eſſoin, he ſhall be diſtrained by the great Diſtreſs above given.*

* Put the Caſe, That upon the Summons the Defendant is returned Nihil, and at the Attachment and Diſtreſs Nihil alſo; this Caſe is out of the Letter of the Statute, for the Defendant was never ſummoned; but it is ſaid, That when there be two Miſchiefs at the Common Law, and the Leſſer is provided for by expreſs Words, the Greater ſhall be included within the ſame Remedy. This Caſe, when Nihil is returned, is the greater Miſchief, for he by his Default ſhall loſe nothing, but in the Caſe provided, the Defendant by his Default ſhall loſe Iſſues; and the Law intends, that he will rather appear than loſe Iſſues. 2 Inſt. 124.

A Quare Impedit is brought againſt two; upon the Diſtreſs one doth appear, and the other makes Default; in 7 E. 3 it was reſolv'd, that the Plaintiff ſhould not preſently have a Writ to the Biſhop againſt him that makes Default, for that it might be, that the other that appears ſhall have againſt the Plaintiff a Writ to the Biſhop; And it was there ſaid, That it was not reaſonable, that upon one Origiral the Plaintiff ſhould have one Writ to the Biſhop for him, and another againſt him; but this notwithſtanding, the Plaintiff by this Act ought to have againſt him that makes Default, a Writ to the Biſhop; and it was not againſt Reaſon, if the other Defendant can bar the Plaintiff, for him to have a Writ to the

Biſhop

Biſhop againſt the Plaintiff by the Common Law ; And ſo be the later Books, and common Experience, at this Day. 2 Inſt. 124, 125.

† Eſſonium or Exonium, is derived of the French Verb Eſſonier or Exonier, which ſignifieth to excuſe, ſo as an Eſſoin in legal Underſtanding is an Excuſe of a Default, by Reaſon of ſome Impediment, or Diſturbance, and is as well for the Plaintiff as the Defendant, and is all one with that which the Civilians call Excuſatio. Of Eſſoins there have been (as we have read in our Books) 5 Kinds, viz. 1ſt. De Servitio Regis. 2dly, In Terram Sanctam. 3dly, Ultra Mare. 4thly, De Malo Lecti, in our old Books called Eſſonium de Reſiantiſa. 5thly, Et de Malo veniendi ; and this laſt is the common Eſſoine which is intended in this Act. 2 Inſt. 125.

In a Quare Impedit or Darrein Preſentment, an Eſſoin de Service le Roy ad Terram Sanctam, or Ultra Mare, lieth not for doubt of the Lapſe, but a common Eſſoin lieth; and of Eſſoins the Mirror ſaid well, Abuſion eſt que faux Cauſes de Eſſoines ſont Receivable de cy que Droit, ne allowe Fauxime in nul Caſe, & Abuſion eſt d'allower Eſſoine in Perſonal Actions; For the ſame Author treating De Articles per viels Roys ordain, ſaith, Ordein fuerunt Eſſoines in mixt Actions, and Reals & Ne in Perſonels. And I find not in Glanvill any Eſſoins but in Real and Mixt Actions; but before the making of this Act, Eſſoins were allowed in Perſonal Actions. 2 Inſt. 125.

*And if he come not, then * by his Default a Writ ſhall go to the Biſhop of the ſame Place, that the Claim of the Diſturber for that Time ſhall not be prejudicial to the ‡ Plaintiff; ſaving to the Diſturber his Right at another Time when he will ſue therefore.*

* Upon theſe Words of this Act, Plaintiff ſhall have a Writ to the Biſhop without making of any Title. 2 Inſt. 125. —— The Statute ſaith only, Scribatur Epiſcopo, and yet the Plaintiff ſhall have both a Writ to the Biſhop, and beſides a Writ to enquire of Damages. If the Biſhop be out of the Realm, a Writ to the Biſhop may be awarded to his Vicar-General, for he is in Place of the Biſhop. 2 Inſt. 125.

If the Defendant appear at the Grand Diſtreſs, and take a Day by Prece partium, and after makes Default, no Writ ſhall be awarded to the Biſhop; for this Caſe, in reſpect of his Appearance, is out of the Statute ; but a new Diſtreſs ſhall be awarded. 2 Inſt. 125.

‡ The King ſhall take the Benefit of this Statute. 2 Inſt. 125.

*The * ſame Law, as to the making of Attachments, ſhall from henceforth be obſerved in all Writs where Attachments lie, as in making Diſtreſſes, ſo that the ſecond Attachment ſhall be made by better Pledges, and afterwards the laſt Diſtreſs.*

* This is the laſt Clauſe of this Chapter and is to be underſtood according to the Letter, and needeth not any Expoſition. 2 Inſt. 125.

2. In Quare Impedit the *Plaintiff recover'd againſt the Biſhop, and had Diſtringas Epiſcopum directed to the Sheriff for diſturbing the Church*; and the Sheriff returned 20s. in Iſſues, and the Plaintiff pray'd another Diſtreſs, and had it. Br. Quare Incumbravit, pl. 2, cites 21 E. 3. 31.

3. If the *Defendant makes Default after Appearance*, the Plaintiff ſhall recover immediately, and his Damages; but if they have *Day by Continuance*, there the Plaintiff ſhall only have Diſtringas upon the Default. Br. Quare Impedit, pl. 151, cites 2 H. 4. and 6 R. 2.

4. Quare Impedit; the Sheriff return'd *Nihil at the Summons, and Attachment at the Diſtreſs*; And by 4 Juſtices, the Plaintiff ſhall recover by Equity of the Statute ; But 2 Juſtices Contra. Br. Quare Impedit, pl. 152, cites 11 H. 6. 3.

5. In Quare Impedit the Sheriff may *ſummon the Defendant in the Church*. Per Martin. But Danby and Cotton Contra; but that he may, in Writ of *Right of Advowſon*. Br. Quare Impedit, pl. 152, cites 11 H. 6. 3.

S. P. For in this Writ the Advowſon is not demanded, but the Diſturbance is to be puniſhed for the Damage done to the Perſon. By Danby and other Juſtices. F. N. B. 32. (E) in the new Notes there (b) cites S. C.

6. If *ſome of the Plaintiffs appear* in Quare Impedit, *and ſome not*, Summons ad Sequendum ſimul ſhall iſſue before the others ſhall proceed. Br. Quare Impedit. pl. 153. cites 11 H. 6. 23.

7. The *Biſhop* of Coventry was *Patron of two Prebends*, and he *granted the next Avoidance of either* of them, *as ſhould happen to be firſt vacant* to J. S. which *Grant was confirmed* by the Dean and Chapter; *The Biſhop* that made the Grant *died*; *One of the Prebendaries died*; The *then Biſhop collated it to M.* and the Grantee brought a Quare Impedit, and the Court were of Opinion, That it muſt be *brought in that County where the Cathe-*

Br. Lieu. pl. 24. cites 21. E. 3. 5. S. P.

dral Church is, and *not where the Body of the Prebend lies*, according to 21 E. 3. D. 194. pl. 33. Mich. 2 & 3 Eliz.------ v. Ralph Bayne Bp. of Lincoln and Merrick.

8. If the Biſhop and Defendant join in bringing a Writ of Error, the Biſhop, unleſs *ſummoned and ſevered*, muſt join in the *Aſſigning* them. Cro. J. 92. Mich. 3 Jac. Lancaſter v. Lowe.

9. *After Judgment* in Quare Impedit for the King v. Saker, and Writ to the Biſhop, the *Incumbent continued Poſſeſſion, and waſted the Vicarage Houſe*, ſo a Prohibition was pray'd and granted per Curiam; For as Coke ſaid, 'Tis the Dowry of the Church, and any one may have this Writ againſt him; For it is the Writ of the King, and the *Prohibition* was *Not to do waſt*. Roll. R. 335. Hill. 13 Jac. in the Caſe of Knowles v. Harvey.

10. *Judgment* was in Quare Impedit, and the ſame Term a *Writ of Error* was delivered to the ſame Court *before a Writ to the Biſhop* was awarded to admit the Clerk. Per tot. Cur. The Writ of Error ought to have been allowed without any other Superſedeas, becauſe a Writ of Error is a *Superſedeas* in it ſelf. Godb. 439. Trin. 5 Car. B. R. Earl of Pembroke v. Boſtock.

A Juror was deny'd to be withdrawn after Evidence given in Qua. Imp.

11. In a Quare Impedit, if the Ven. Fac. be returned, the Plaintiff cannot be *nonſuited* without calling the *Jury*; But if the Ven. Fac. be not returned at the Day, then he may be nonſuited on the Roll without calling the Jury; And ſo he may in the firſt Caſe if Deft. conſent. Noy. 107. Anon. and Departure from the Bar, becauſe the King ſhall not be prejudiced; For the Judgment is *Salvo Jure*, but otherwiſe it is uſed in the Exchequer upon an Information or Intruſion. Noy 111. the King v. the Biſhop of Wincheſter and Dr. Hide.

2 Mod 264. S C. accordingly, and the Court ſaid, that the Sheriff ought to have gone to the Church, and ſeiſed the Profits, and if there be nothing, to return a Nihil; And that the Court being moved again, continued their former Opinion; It was objected that leaving *due Notice upon the Summons* was as much as was required; For the other Writs are only to give the Defendant Time to plead, and therefore not neceſſary that Notice ſhould be given *upon every one of the Writs*; For if once ſerved it is enough. But the Court was of Opinion, that the Defendant having not appeared nor caſt an Eſſoign, and Judgment Final being given, it was Reaſon that all the Proceſs ſhould be ſerved really, of which there had been no Occaſion, if he had either appeared or eſſoined, and therefore the Proceſs not being duly ſerved Judgment

12. In a Quare Impedit againſt two, they *ſeverally appeared, and caſt an Eſſoign by Turns*, and Idem Dies was given to him who firſt appeared &c. Then an *Attachment iſſued* againſt them for not appearing at the Day, and *Proceſs continued to the Grand Diſtreſs*; which being *returned, and no Appearance, Judgment Final was ordered to be entered*, according to the Statute of Marlbridge, cap. 12. It was moved to diſcharge this Rule, becauſe the Defendants were not ſummoned, either upon the Attachment or Great Diſtreſs, and the *Sureties, returned upon the Proceſs, were John Doe and Rickard Roe*; that if Judgment final ſhould be entered, there is no Remedy but by Writ of Deceit, and on ſuch a Writ the Summoners and Veyors are to be examined in Court, but Feigned Perſons cannot be examined, ſo that it is an Abuſe of Officers to return ſuch Names; that Ignorance of the Sheriff was the original Cauſe of it, who being to make Returns, and finding the Names of John Doe and Richard Roe ſet down in the Books of Precedents as Forms, followed thoſe Precedents exactly, and made their Returns accordingly, and took no further Care to return true Summoners, per Cur. the Deſign of the Statute of Marlbridge was to have Proceſs duly executed, and that cannot be without the Tenants having notice of it; For if the Defendant do not appear upon the Summons, an Attachment iſſues againſt him, commanding the Sheriff to ſeiſe his Body, and to make him give Sureties for his Appearance, if he will not appear, then the Grand Diſtreſs is awarded, to ſeiſe the Thing in Queſtion; and if ſtill he neglect to appear, then Judgment Final is to be given, by which the Right is for ever concluded, and this being ſo fatal, the Proceſs muſt never be ſuffered to be changed into a Thing of Courſe. It is true, the Defendant here had Notice of the Suit, but he had not ſuch Notice as the Law allows him; And for his Fourching in Eſſoign the Law allows it him. Accordingly Judgment was ſet aſide. Mod. 248. pl. 7. Trin. 29 Car. 2. C. B. Searle v. Long.

Judgment was ſet aſide, and cited Raſt. Ent. 217. And they held that the *Eſſoign of the other Defendant was no wiſe binding to the Patron Defendant*, becauſe they may ſever in Pleading, and ſo that Judgment was likewiſe ſet aſide.

(B. d. 5) *Pleadings. Abatement of* the *Writ by Death* of one of the Parties, *and the Effects* thereof.

1. PRIOR *Defendant* in Quare Impedit *died*, and the Writ abated, he *not being named by his proper Name*, quod Nota; For now there is no Defendant, Br. Corporations, pl. 79. cites 10 E. 3. 16. & Fitzh. Quare Impedit 32. S. P. And after the 6 Months paſſed the *Plaintiff brought another Quare Impedit againſt his Succeſſor*, and awarded good. Br. Quare Impedit. pl. 158. cites 10 E. 3. & Fitzh. Quare Impedit. 32.

2. *Baron and Feme brought Quare Impedit*, and the *Feme dy'd pending the Writ*, and yet the Writ remained good, and the Baron had Writ to the Biſhop *as Tenant by the Curteſy*. Br. Quare Impedit. pl. 67. cites 38 E. 3. 35. S. P. Br. Quare Impedit pl. 57. cites 14 H. 4. 12.

In Quare Impedit *by the Baron and Feme, if the Writ abates by the Death of the Feme, and the Baron brings another Writ*, and *Plenarty is pleaded in Bar*, he may *aver, That the Church was void, within 6 Months before the firſt Writ purchaſed*; For it is abated there by *the Act of God*, and not by the Folly of the Party. Per Newton. Br. Journes &c. pl. 12. cites 7 H. 6. 16.

Baron and Feme made Title to preſent in Right of the Feme, and *after Iſſue joined, and before the Venire Facias the Feme died.* The Baron ſhewed that himſelf had taken out a Venire Facias in his own Name; Whereupon the Defendant demurred, ſuppoſing that the Writ was abated; But Winch was of Opinion, that the Writ was not abated, becauſe this was a Chattel veſted in the Husband during the Wife's Life. Win. 73. Paſch. 22. C. B. Blunt & Ux. Hutchinſon. ——— So where *ſeveral Barons and and their Femes were Plaintiffs, and one of the Femes died* pending the Writ before Judgment, the Court awarded Writ to the Biſhop in the Name of the Baron and the others, Mo. 456. pl. 625. Trin. 38. Eliz. the Counteſs of Northumberland's Caſe.—— *But* if Quare Impedit be brought *againſt Baron and Feme and others*, and the *Feme was dead the Day of the Writ purchaſed*, the Writ ſhall abate; *Contra, if* ſhe had died *pending the Writ*. Br. Quare Impedit. pl. 153. cites 11 H. 6. 23.

3. If Quare Impedit be *brought againſt the Patron and Incumbent*, and the *Patron dies pending the Writ*, yet the Writ ſhall not abate, and ſo Recovery may be againſt the Incumbent alone. Br. Quare Impedit. pl. 47. cites 7 H. 4. 25. 37. Quare Impedit againſt the Patron and Incumbent, the *Patron pleaded in Bar*, and the *Incumbent pleaded the ſame* Matter alſo, and *ſo to Iſſue*, and after one came and pleaded that the *Patron is dead after the laſt Continuance*, Judgment of the Writ, and the Writ was awarded good, per Judicium, after long Argument, by Reaſon of the Miſchief of the Lapſe. Br. Quare Impedit. pl 6. cites 9 H. 6. 30. ——— *So* where 2 * *Parceners*, or 2 *Jointenants* bring Quare Impedit, and the one dies, the Writ ſhall ſtand for the ſame Miſchief, and ſo is 38 E. 3. 35. Br. Quare Impedit. pl. 6. cites 9 H. 6. 30. ——— S. P. Br. Quare Impedit. pl. 67. cites 38 E. 3. 35.——*S. P. And ſo of *Tenants in Common*. Br. Quare Impedit. pl. 57. cites 14 H 4. 12.

4. If *one of the* * *Plaintiffs, or* one *of the Defendants* in Quare Impedit *dies*, Quære if the Writ ſhall not abate. Br. Quare Impedit. pl. 7. cites 9 H. 6. 56. per Rolfe. * The Death of one Plaintiff ſhall not abate the Writ, but he ſhall be ſevered F. N. B. 35. (L)

If 2 *bring Writ of Right of Advowſon, or if* it be brought *againſt two*, and the *one dies*, of the one Part or the other, the Writ ſhall abate, *Contra in a Quare Impedit*; For there, after Title made, the Defendant is become Actor, and he may recover Damages againſt the Plaintiff. Br. Quare Impedit pl. 6. cites 9 H. 6. 30. per Babbington.

In Quare Impedit *againſt* 3. the *one died pending the Writ*, and yet the Writ was awarded good againſt the other; quod nota. Br. Quare Impedit. pl. 63. cites 9 H. 5. 6.

Death of the one before Writ purchaſed, ſhall abate the Writ againſt all; *but* Death of the one *pending the Writ* ſhall not abate the Writ [but] againſt himſelf himſelf only; Note the Diverſity. Br. Brief pl. 3. cites 27 H. 8. 26.

Quare

Quare Impedit was brought againſt the Biſhop, who collated M. as Patron, and pending the Writ, the Biſhop died, yet Judgment was given for the Plaintiff to recover the Preſentment, and Damages to half a Year's Value, and an Amoveas of M. and Writ to the now Biſhop or Metropolitan as the Plaintiff pleaſe. D. 194. pl. 33 Mich. 2 & 3 Eliz. Ralph Bayne Biſhop of Coventry &c. and Meyrick's Caſe. —Ibid. Marg. ſays that Quare Impedit was brought againſt Patron Parſon and Ordinary, and the Patron died, and yet Judgment was given againſt all, cites Trin. 35 Eliz. B. R. Sir Richard Pipe's Caſe —— Cro. E. 324 S. C. by Name of Pipe v. the Queen.—— S. P. For there are 2 Miſchiefs. 1. if the Writ abates the *Diſturbance* ſhall not be *puniſhed*, though the Writ was well commenced; For there wants a Diſturber; And 2dly, if the Writ abates not, but the Plaintiff ſhall proceed to Judgment and Execution, the very Patron ſhall be *put out of Poſſeſſion*, and as in the laſt Caſe, he may recontinue Poſſeſſion by Writ of Right, but is without Remedy, if the Writ abates, which is the greater Miſchief, it ſhall not abate. 7 Rep. 26. b in Hall's Caſe, and cites 7 H. 4. 26 b. 13 H. 8. 13. 9 H. 6. 6. 57.

Quare Impedit by a Prior againſt the Biſhop of C. and others, *one pleaded that one of the Defendants was dead the Day of the Writ purchaſed*, and demanded Judgment of the Writ, et non Allocatur for all. Br. Quare Impedit, pl. 49. cites 7 H. 4. 34, 36.

The *Grantee of the next Preſentation brought Quare Impedit, and di d after the 6 Months paſt, pending the Writ*, and the *Executors brought another Quare Impedit by Journeys Accounts*, and *took general Writ, and counted generally* that the Grant was made to the Teſtator, and he brought Quare Impedit and died, and that they brought this Writ, Et ea Ratione pertinet ad ipſos preſentare, and the Defendant hindered them, and then it purported, that this is of a Diſturbance done to themſelves after the 6 Months paſſed, and then the Writ does not lie; For *all ought to be comprized in the Writ, and count ſpecially, and ſhall demand Writ to the Biſhop upon the Preſentation, and Writ of the Teſtator*, and becauſe it did not, therefore ill, Et nihil inde venit. Br. Quare Impedit. pl. 160. between Mark, Ogle, and Harriſon. But Brooke ſays, It *ſeems that where the Plaintiff dies, none can have other Writ by Journeys Accounts*. —— Br. N. C. 4. E. 6. pl. 410. S.C.

5. A. *grants* to B. *the next Preſentation* to the Church of D. the Church voids, and B. brings Quare Impedit, and dies pending the Writ, and after the 6 Months paſs, the Executor can have no Remedy. Br. Quare Impedit. pl. 158. cites 4 E. 6.

The *Plaintiff* in a Quare Impedit *died pending the Writ*; It was prayed to have another Writ for the Executors; For he ſaid he could not have it but by the Allowance of the Court, and the Court granted it, but bid him look well to it, if it lay in this Caſe or not, and in what Form the Writ ſhall be. Cro. E. 174. Hill. 32 Eliz. Walter Moile's Caſe.

Quare Impedit is revivable by *Journeys Accounts*. Per Hale Ch. J. Ventr. 230. Hill. 24 & 25 Car. 2. B. R. in the Caſe of Dacres and Duncombe.

6. Quare Impedit brought *by the King* abates by his *Demiſe*. Het. 83. Paſch. 4 Car. B. R. the King v. Clough.

(B. d. 6) Abatement of the Writ for *other Matters*. In what Caſes, and the Effect thereof.

1. NOTE; A *Writ* brought *by the King* or Queen *is not, Unde queritur, that the Defendant injuſte* &c. 18 E. 3. 1, 2. (as it is in the Caſe of a Common Perſon) Alſo if the Words *Ut dicitur* be *omitted*, the Writ is good; Yet ſee 38 E. 3. 31. That *in the King's Caſe* it ſhall be *Ut dicitur*, but *in that of a Common Perſon*, in all Writs it ſhall be *Ut dicit.* and if it be Ut dicitur, the Writ ſhall abate. F. N. B. 32. (E) in the New Notes there (c) cites the above Caſes, and 17 E. 3. 50. 74.

2. Quare Impedit by the *King* againſt L. and *intitled himſelf to the Moiety of the Advowſon, becauſe L. the Defendant was Outlaw'd in Treſpaſs, and conveyed in Forma Juris* (as appears in the Book) and upon the Avoidance he preſented, and *L. ſaid that the Advowſon was ſevered into three Portions*, and named the Portions, *Abſque hoc, that the Incumbent, who died, was preſented by the Father of L. as the King ſuppoſed in his Count*, and the *King demurred*, and had Writ to the Biſhop, becauſe the Plea of the Defendant, viz. That the Church was *ſevered into three Portions goes in Abatement of the Writ*, and the *Traverſe goes in Bar*; But if he had reſted upon the Plea, that the Advowſon was ſever'd into three Parts, the King's Writ had abated. Br. Quare Impedit. pl. 115. cites 22 Aſſ. 33.

3. A *Writ* was brought *by the Queen ratione minori ætate* J. filii & *hæredis S. in Cuſtodia Reginæ exiſten. de qua præd. S. Terram ſua tenuit* in Capite,

Capite, where *by the Count it appeared, that he held of one G. who was the Queen's Ward*, and yet held good. F. N. B. 32. (F) in the new Notes there (b) cites 24 E. 3. 54.

4. In Quare Impedit it was agreed, that it is a good Plea to the Writ by the Patron or Incumbent, to ſay *that the Writ bears Date in the Life of the laſt Incumbent*. Br. Brief, pl. 75. cites 46 E. 3. 19.

So if it be brought by the Heir to ſay, that it *bears Date in the Life of the Anceſtor* in this Action. Br. ibid.——Br. Quare Impedit, pl. 37. cites S. C.

5. In Quare Impedit by a Prior againſt the Biſhop of C. and others, one *pleaded that the Church was full the Day of the Writ purchaſed of the Preſentment of the Plaintiff*; Judgment of the Writ, and becauſe he *claim'd nothing in the Patronage*, the Plaintiff demurr'd; and therefore awarded that he ſhall not have the Plea; quod nota. Br. Quare Impedit, pl. 49. cites 7 H. 4. 34. 36.

6. In Quare Impedit the *Defendant ſaid that the Clerk of the Plaintiff was Inſtituted and Inducted before the Writ purchas'd* and is now in, Judgment of the Writ; and the beſt Opinion was, that it is a good Plea; for he cannot recover the Preſentation where himſelf has the Preſentation, and it does not lie for Damages only. Br. Quare Impedit, pl. 54. cites 12 H. 4. 11.

And Per Skene, it is a good Plea for the Defendant *that the Church was full of his own Preſentment 6 Months before the Writ purchas'd.* Ibid.

7. In Quare Impedit by C. againſt B. the Plaintiff *counted that N. was ſeiſed of a Manor and Advowſon appendant who preſented* &c. *and N. gave in Tail*, and the *Donee at the Avoidance preſented, and his Clerk in* &c. and after the *Tenant in Tail died without Iſſue*, and he in *Remainder entered and preſented* T. &c. and his *Clerk in, and* after *died, and he preſented again, and the Defendant diſturb'd him*; and the *Defendant ſaid that a Stranger was ſeiſed of the Manor and Advowſon appendant, and preſented F.* &c. *and died, and the Manor with the Appurtenances deſcended to K. as Daughter and Heir, who took the Defendant to Baron, and the Baron and Feme in Jure Uxoris preſented*, and the *Feme is yet alive*; Judgment of the Writ: And the beſt Opinion was, That it is no Plea to the Writ; for the *Plaintiff alleges the Avoidance by the Death of T. and the Defendant by the Death of F.* and alſo the *Defendant does not allege that the Preſentation made by the Father of his Feme was after the Preſentation of which the Plaintiff declares, nor does he traverſe it*. Br. Quare Impedit, pl. 108. cites 14 H. 6. 23.

8. *Jointenancy of the Part of the Defendant* is no Plea in Quare Impedit: *Contrary*, it ſeems, *of the Part of the Plaintiff*. Br. Quare Impedit, pl. 108. cites 14 H. 6. 23.

In Quare Impedit *againſt ſeveral, one cannot plead to the Writ by Joint Coparcenary* [or] *Tenancy in Common Pro indiviſo in the Plaintiff* of the Advowſon, *unleſs he ſhews him to have other Title in the Advowſon, or to be Incumbent*. So if the Count be vicious; Quære of the Miſnomer of the Plaintiff. Br. Quare Impedit, pl. 154. cites 31 H. 6. 15.

9. In Quare Impedit, if the Writ abates *upon Plea to the Writ found againſt the Plaintiff, or by Confeſſion of the Exception* to the Writ, this is *peremptory* to the Plaintiff, and he ſhall not have another Quare Impedit. Br. Peremptory, pl. 12. cites 7 H. 6. 15.

Br. Quare Impedit, pl. 75. S. P. and cites S. C. Where the Writ was againſt Patron and Incumbent, and the Patron made Default, and the *Incumbent* appeared, and *pleaded that the Plaintiff was made a Knight after the laſt Continuance*, and was found for the Incumbent, by which the Writ abated, and the Plaintiff prayed a Writ to the Biſhop for Default of the Patron, but could not have it, becauſe it is repugnant to have a Writ to the Biſhop when his Writ abates.——Where the Plaintiff in a Quare Impedit was *made a Knight pending the Writ*, Shelly thought that inaſmuch as this ſhall be accounted his own Default, he ſhall not have a Writ by Journeys Accounts. And agreed that the Books are clear that the Writ ſhall abate. * D. 55. a. b. pl. 7. Paſch. 34 & 35 H. 8. Anon.——[But it ſeems by the other Part of the Caſe (tho' not clearly expreſs'd) that if this being made a Knight was not the Act of the Plaintiff himſelf, but that he had been *compell'd by the King to be made a Knight* (as any Man having Lands of a certain Value, was compellable to be at that Time, and till the 12 Car. 2.) then he might have had this Writ. See Ibid.——And after this Caſe it was enacted by 1

E. 6. cap. 7. that making a Plaintiff &c. Knight &c. ſhould not abate the Suit.]———* S. C. Cited 6 Rep. 10. b. in Spencer's Caſe.—— The Plaintiff's being made a Knight pending the Writ is peremptory; for common Experience tells us, that it is the Act of the Plaintiff, and no one is compell'd or conſtrained thereto. 7 Rep. 27. b. in Sir Hugh Portman's Caſe.

10. In Quare Impedit the Plaintiff in his *Count made Title as to the Advowſon appendant.* The *Defendant ſhew'd Fine levied of the Moiety*, ſo that the Moiety is in groſs, Judgment of the Writ; and it was doubted if it goes to the Writ or to the Action. Br. Quare Impedit, pl. 10. cites 33 H. 6. 11.

In Quare Impedit the Plaintiff *counted of a Gift in Tail to his Anceſtor of a Manor and Advowſon as in Groſs, and counted of two Preſentments* & non excipitur; *and that the Church voided by the Death of R. and he preſented*; and *the other ſaid that the Advowſon was appendant to the Manor, which Manor and Advowſon were given to the Anceſtor of the Plaintiff in Fee, and that the Brother of the Plaintiff gave one Acre Parcel of the Manor, and the Advowſon to the Brother of the Defendant whoſe Heir he is*, and *that R. the Preſentee died 6 Years ſince, and that the Church voided by the Death of W. Preſentee of the Brother of the Defendant*, Judgment of the *Writ*, which *ſuppoſes an Avoidance by the Death of R.* and alſo that this *Writ is not purchas'd within 6 Months*; and it was challeng'd for the Doubleneſs, & non Allocatur; for the *Plea is to the Writ*, and *the Appendancy and the Deſcent to the Defendant is for Title.* And it was agreed there, that if the Advowſon was *in Groſs*, then the Preſentments are but Uſurpations, and ſhall not prejudice the Heir in Tail by Reaſon of the Statute; but if it was *appendant*, then the Alienation of the Acre and Advowſon is a Diſcontinuance, and he cannot preſent till he has recovered the Acre by Formedon; but if it was in groſs he may have Quare Impedit; note the Difference; for Tenant in Tail cannot have Writ of Right. And after the Parties were compell'd to take *Iſſue, if the Advowſon was in groſs or appendant at the Time of the Gift in Tail*; quod nota. Br. Quare Impedit, pl. 31. cites 43 E. 3. 24.——And in Anno 44 E. 3. 15. in the ſame Caſe the Iſſue was taken if the Acre, given with the Advowſon in Diſcontinuance, was Parcel of the Manor or not, and ſo the *Appendancy and the Groſs was the Effect of the Matter*, to maintain or deſtroy the Action. Br. Quare Impedit, pl 31. cites S. C.

11. In Quare Impedit the Plaintiff *counted that one J. F. was ſeiſed in Fee of the Manor of B. ad quod Advocatio prædicta pertinet, and preſented one R. and after gave the Manor* to which &c. *to one O. his Anceſtor in Tail, and alleg'd another Preſentment in the Tenant in Tail, and convey'd the Manor to himſelf as Heir in Tail*, and alleg'd ſeveral Deſcents; Littleton demanded Judgment of the *Writ*; for it is Ad quod Advocatio *pertinet, where it ſhould be pertinuit*, & non allocatur; and the Deſcents adjudg'd not double, by Reaſon that the Gift is the Effect, and the Deſcents are only Conveyances. Br. Quare Impedit, pl. 11. cites 33 H. 6. 32.

If the Writ abates for Falſe Latin *or Inſufficiency of Form*, this is the Default of the Clerk, and ſhall not be peremptory to the Plaintiff, nor ſhall the Defendant have Writ to the Biſhop upon it, but the Plaintiff may have a new Writ of Quare Impedit; and with this agrees 3 H. 6. 3. a. 31 H. 6. 15. a. 7 Rep. 27. b. Paſch. 40 Eliz. in Sir Hugh Portman's Caſe.

12. It was agreed for Law, that if Quare Impedit abates, the Plaintiff ſhall not have another Writ; for this *is peremptory*; quod nota; and *quære of* it be *for falſe Latin*, which is the *Default of the Clerk*. Br. Quare Impedit, pl. 15. cites 34 H. 6. 37.

S. P. Reſolv'd; and ſo tho' the Writ be brought within ſix Months. 7 Rep. 27. b. Paſch. 40 Eliz. Sir Hugh Portman's Caſe.——So of a *Diſcontinuance*. Ibid.——The Nature of a Quare Impedit is to be final upon Nonſuit or Diſcontinuance. Hob. 137. 138. pl. 187. Trin. 14 Jac. in Caſe of the Earl of Bedford v. Biſhop of Exeter and Wilſon.——The *Nonſuit of one Plaintiff* ſhall not abate the Writ, but he ſhall be ſevered. F. N. B. 35. (L.)

13. In Quare Impedit if the Plaintiff is *Nonſuited after Appearance*, this is *peremptory*, tho' it be *before Declaration*; quod nota. Br. Peremptory 74. cites 19 E. 4. 9.

This Caſe ſeems not clearly abridg'd; The Caſe itſelf is, That ſhe recover'd by Defanlt againſt one, and had Judgment to have Writ to the Biſhop &c. with a Ceſſet Executio till tried between the others and her; for otherwiſe this Execution againſt one alone, will abate the Writ againſt the others; as in Treſpaſs againſt two, if the Iſſue be tried againſt one, and the Plaintiff prays Execution againſt him, the Writ ſhall abate againſt the others &c. Paſch. 20 E. 4. a. pl. 3.

14. *Quare Impedit by the Queen* againſt others, and *one is by her condemned*, and *Execution taken againſt him*; this ſhall abate all the Writ againſt the others, as in Treſpaſs againſt ſeveral. Br. Executions, pl. 146. cites 20 E. 4. 1.

15. In Quare Impedit againſt ſeveral, it was agreed that to ſay that *No ſuch in Rerum Natura*, as the one of them is, ſhall abate all the Writ; but * *Miſnomer of the one* ſhall not abate but only againſt him who is miſnamed. Br. Brief, pl. 3. cites 27 H. 8. 26.

The King licenced N. to found a Provoſt of a Chauntery, which ſhall be called *Provoſt of the Chauntery of C.* and after the King impleaded him by Name of the *Provoſt of the Houſe of C.* and for this Miſnoſmer the Quare Impedit abated, notwithſtanding it was averr'd for the King that he was known by this Name. Br. Miſnomer, pl. 24. cites 38 E. 3. 14.——S. P. Br. Brief, pl. 137. cites S. C. The Reaſon ſeems to be, becauſe the King ſhall take Conuſance of the Name, which he himſelf appointed by his Writ.

16. The *Teſte* of every Quare Impedit *ſhall be the ſame Day that the Writ is obtained, by Reaſon of the Lapſe*, that it do not prevent the ſix Months, ſo as to defraud the Ordinary. Br. Quare Impedit, pl. 151. cites the Regiſter.

17. In Quare Impedit by the Queen the Count was upon a Preſentation made by H. 8. in Right of his Dutchy of Lancaſter, and ſo convey'd the ſame to her by Deſcent. Exception was taken to the Writ, becauſe it does not ſet forth how the Queen claims the Advowſon; as where the King preſents by the Temporalties in his Hands, the Writ ſhall ſay, Ratione Epiſcopatus Cant. nunc vacant. or in Caſe of Ward, Ratione Cuſtodiæ; and that therefore in this Caſe it ought to be ſaid Ratione Ducatus. But Anderſon Ch. J. held the Writ well enough, and it is good enough both Ways, either Generally or Specially; and cited the Book of Entries accordingly, where the Writ is general, but the Count is Ratione Ducatus ſui Lancaſtriæ. And afterwards a Precedent was ſhewn of Anno 32 H. 6. where the Writ was General, and the Count was Ratione Ducatus. Le. 226. 227. pl. 307. Paſch. 33 Eliz. C. B. The Queen v. Biſhop of York.

18. If a *Man has an Advowſon in right of his Feme*, and the Husband brings Quare Impedit, the Writ ſhall be general Ad ſuam ſpectat Donationem, without mentioning his Wife; per Anderſon Ch J. and cited the Book of Entries 483, that the Writ is general and the Count ſpecial. Le. 227. pl. 307. in Caſe of the Queen v. Biſhop of York.

19. The Plaintiff in a Quare Impedit declared thus, (viz.) *Suam ſpectat Donationem*, leaving out the Word (*ad*;) adjudged, that the Writ ſhall be amended. 3 Nelſ. a. 36. pl. 5. cites Reynoldſon v. Biſhop of London. 3 Lev. 435.

I do not obſerve any ſuch Point in the Caſe cited, but Goldsb. 78. pl. 12. Hill. 30 Eliz. in **Brokesby's** Caſe is the ſame Point, and that at length by the Opinion of all the Juſtices it was amendable, and that a Clerk of the Chancery came into C. B. and amended it.——Cro. E. 119. pl. 4. Mich. 30 & 31 Eliz. S. C. by Name of Rookesby's Caſe.

20. If after 6 Months a Quare Impedit *abate*, which was brought within the 6 Months, the Plaintiff is remedileſs to recover his Preſentation. Cro. E. 119. Mich. 30 & 31 Eliz. B. R. Rookſeby's Caſe.

S. P. and yet the Writ ſhall not abate, but he ſhall recover all in Damages, and therefore to prevent this it is uſual to name the Ordinary in the Quare Impedit; Per Pigot. Br. Quare Impedit, pl. 147. cites 9 E. 4. 30.——*But* if the Quare Impedit *abates within the 6 Months*, the Plaintiff may bring another Writ; but if the Plaintiff be * *Nonſuit* within the 6 Months, he cannot have a new Writ; becauſe the Defendant on Title made has a Writ to the Biſhop, and for that Cauſe a new Writ to the Biſhop will not lie. Brownl. 161. Anon.——*S. P. 7 Rep. 27. b. Portman's Caſe.

21. The *Patron granted the next Preſentation to A. and B.* The Church became void, and *during the Avoidance A. releaſed* his Right *to B.* who being diſturbed, brought a Quare Impedit alone; The Defendant demurred, becauſe it appears of the Plaintiffs own ſhewing, that they ought to have joined in the Action, and the Releaſe, being made after the Church was void, was of no Effect; Adjudged accordingly that the Releaſe was void. Le. 167. pl. 232. Mich. 30 & 31 Eliz. C. B. Brokesby v. Wickham and Biſhop of Lincoln.

Ow. 85 S. C. adjudged.——3 Le. 256, pl. 340. Hill. 32 Eliz. S. C. the Court held the Releaſe void; becauſe here was not any Intereſt to be releaſed, but a Power only to preſent, and an Authority annexed to the Perſon.—After the Voidance it is merely a Choſe en Action, and ſo not to be releaſed. Cro. E. 173 Brooksbie's Caſe.——And. 223. pl. 241. S. C. adjudged——Goldsb. 112. pl. 19. S. C. Adjornatur.

22. A Quare Impedit *was brought by several Persons jointly*, and *in the Declaration they vary in their Title*; The Court agreed, that the Writ shall abate; For the Judgment must agree with the Writ, unless there be *Summons and Severance*; and upon divers Titles a joint Judgment cannot be given; for there can be but one Rightful Title. Mo. 184. pl. 327. Anon.

23. In a Quare Impedit; where the Writ abates, the *Defendant shall not have a Return*; for perhaps his Clerk is in; if not, he may recover by a Quare Impedit as Plaintiff; and there can be no Judgment where there is no Writ. Where the Writ abates there is no Writ. Jenk. 124. in pl. 51.

24. In Quare Impedit &c. the Defendants pleaded in Bar *another Quare Impedit brought by the same Plaintiffs for the same Church*, and *averred that they were the same Plaintiffs*, the same Avoidance, and the same Disturbance, upon which both Actions were brought, and that the first Action is still depending &c. The *Plaintiff replied*, that after the bringing the first Action he still continued seised in Tail of the Advowson; and being so seised, he presented his Clerk to the Bishop &c. who refused him, which is the Disturbance upon which he now declared in this 2d. Action, *and traversed that it was the same Disturbance*, upon which he declared in the former Action. The Defendants demurred; the whole Court agreed, that the Writ ought to abate; for though there must be a Disturbance naturally to maintain the Action, yet the principal Effect of the Suit is to recover the Presentation; and therefore for the same Thing you shall not have two Suits at once. Now there was a Disturbance laid in the first Action, and the Avoidance of the same, so that the *new Disturbance* betters not the Plaintiffs Case; besides, it is the Nature of a Quare Impedit to be final, either upon a Discontinuance or Nonsuit; but by this Means one Man may bring 20 Quare Impedits, which would be intolerably vexatious; and the *adding a new Defendant mends not the Case*; For *still there are two depending against the same Person*; but he may have as many as he will against * several Persons. Hob. 137. pl. 187. Trin. 14 Jac. the Earl of Bedford v. Wilson.

Brownl. 163. S. C. —S. C. cited Hutt. 4. in Case of Andrews v. Hacker.— S. C. cited Brownl. 28. in Case of Sir William St. Andrew v. the Archbishop of York and the Countess of Shrewsbury.—*Several *Quare Impedits* may be brought *against several Defendants*, as one against the Bishop, and another against the Parron and Incumbent; But if A. brings a Quare Impedit against B.— B. cannot have a Quare Impedit against A. Brownl. 16. Anon.

This Case of Coppledick is in Win. 31. where this Plea being pleaded by the Incumbent was demurred to, and another Plea being pleaded by the Patron, viz. that there was no such Church as Ulceby in the County of Lincoln, this last being tried it was found for the Defendant; For that there was an Union of the Church of Fordington to the Church of Ulceby, and that it was called Ulceby cum Fordington, and that Institutions &c. were to Ulceby, and that Ulceby was the greater, and Fordington the lesser Church and united, and therein had lost its Name, it was agreed, that being known by the one Name or the other had been sufficient to have found for the Plaintiff. It was objected for the Plaintiff in Arrest of Judgment, that there was a Mis-trial; For to try the Issue of Nul tiel Vill, the Venire should be from the Body of the County, whereas here it was De Vicineto de Ulceby; But all the Court agreed the Trial good, and that it is admitted there is such a Town, and the Writ implies it; and Judgment for the Defendant.——[But as to the Plea of the Incumbent, viz. that there is no such Richard &c. no farther Notice is taken of it.]——S. C. by Name of Cuppledick v. Terwhit. Hob. 249, 250. Trin. 16 Jac. says, That the whole Writ was abated against all the Defendants upon the Verdict found for the Defendant, and that no Opinion was given upon the other Demurrer of No such Bishop &c.—* The Case of **Blunt v. Hutchinson**, Win. 73. is neither the S. C. nor the S. P.

25. Quare Impedit *against Richard Bishop of Lincoln, the Patron and Incumbent*, who *pleaded*, that at the Day when the Writ was brought, there was *no such Richard Bishop of Lincoln*, and this was held a good Plea in Abatement. 3 Nelf. a. 58. pl. 19. cites Hutt. 33. Coppledike v. Tansey; and Winch 73. S. C. reported by the Name of * Blunt v. Hutchinson.

26. In Quare Impedit the Defendant prayed Oyer of the Writ, and pleaded in Abatement that there was a *Variance* between the Writ and Count, the *Writ* being *Quæ ad nostram spectat Donationem*, and the *Count* was, *Quæ ad suam Donationem spectat Jure Prerogativæ*. It was objected on Demurrer, That the Title by the Writ is a Title in Fee, but this in the Count is only a Title Pro hac Vice; sed non allocatur; For

For the Precedents are ſo, and the Writ is always general; and if the King has Judgment by Default, and a Writ to the Biſhop, this will not gain a General Title to the Crown, or become an Uſurpation; per Holt Ch. J. For where the King has Judgment by Default in a Quare Impedit, he, as well as a Subject, muſt by Suggeſtion on the Roll ſet forth his ſpecial Title. A Reſpondeas Ouſter was awarded. 2 Salk. 559. Trin. 5 W. & M. the King v. Dr. Lancaſter and Biſhop of London.

27. In Qua. Imp. the *Count varied from the Writ*; for the Writ was Quod permittat præſentare *ad Vicariam*, and the Declaration is *Ad Eccleſiam* pertinet præſentare; but upon Exception taken to it the Court reſolved, That *Omnes Vicaria eſt Eccleſia*, and that it is ſo held expreſsly in ſeveral Books, and therefore *is no Variance in Subſtance* but in Form only; and this *not being ſhewn for Cauſe of Demurrer*; Judgment was given for the Plaintiff, and thereupon the Defendants brought a Writ of Error and a Bill in Chancery &c. Carth. 315 &c. Trin. 6 W. & M. B. R. Reynell v. Long.

(B. d. 7) In what Caſes the *Patron* &c. muſt be *named*.

1. THE King may have *Quare Impedit againſt the Incumbent alone*; contra of a common Perſon. Br. Prerogative, pl. 110. cites 41 E. 3. 10. Br. Quare Impedit, pl. 6. cites 9 H. 6. 30. by Babington.—And ſo where the Pope preſented. Ibid.——S. P. Br. Quare Impedit, pl. 47. cites 7 H. 4. 25. 37. ——Quare Impedit by the *King againſt the Incumbent alone*, who pleaded, which *was found againſt the King*, and it was moved in Arreſt becauſe the *Patron was not named in the Writ*, but becauſe the Writ was admitted it was awarded that the Defendant Eat inde ſine die. Br. Quare Impedit, pl. 44. cites 3 H. 4. 2. 3.

Quare Impedit by the *King againſt the Incumbent alone*, and *counted that the Abbeſs of W. was ſeiſed* &c. *in Right of the Church, and preſented W.* who was admitted, *and after the Church voided, and ſhe preſented B who* was admitted, and *after was created Biſhop of S. by which the Church voided, and remained void till the Temporalties came into the Hands of King* E. 3. (which is intended the Temporalties of the Abbeſs as it ſeems to me,) and made the Deſcent to the King who now is, *by which he preſented, and the Defendant diſturbed him*, (and ſo ſee that the * King ſhall have *Preſentation which fell in the time of the former King*, and not his Executors;) and the Defendant pleaded to the Writ becauſe he is only an Incumbent, and the Patron is not named, and the Writ awarded good; for it may be, that the Patron did not diſturb, and alſo in this Caſe *the King ſhall not recover the Advowſon, but only the Preſentation, and by this Recovery the Patron ſhall not be out of Poſſeſſion* as in other Caſes, becauſe it appears that the Title of the King is not to any Inheritance. Br. Quare Impedit, pl. 47. cites 7 H. 4. 25. 37. —— * Br. Preſentation, pl. 11 cites S. C.

The King brought a Quare Impedit againſt the Biſhop, Smith Incumbent, and Langford; The Incumbent pleaded that no Patron was named in the Writ; and per Cur. that is a good Plea in Bar, tho' the *King* be Plaintiff *he claiming to preſent by Lapſe for Simony*. Alſo the *Patron* now *was only Grantee of the Prochein Avoidance*, and had preſented Smith, yet he ought to be named; *but* if the Clerk *had been in by Collation by the Ordinary for Lapſe*, or Proviſion of the Pope in former Times, or Ex Preſentatione Regis againſt whom no Writ lies, if a common Perſon had been Plaintiff in the Quare Impedit, in thoſe Caſes it might be without any Patron. Noy. 151. the King v. Biſhop of Litchfield &c.——Cites 7 H. 4. 37; and 7 Rep. 26. 9 H. 6. &c.

2. Quare Impedit againſt one who *ſaid that the Biſhop preſented him by Lapſe, and that he claimed nothing in the Patronage*, Judgment if Tort; and the other prayed Writ to the Biſhop, becauſe he has diſclaimed in the Patronage; But per Cur. you ſhall not have it, but your *Writ ſhall abate*, becauſe he is no Diſturber, nor the *Biſhop not named in the Writ*; & adjornatur. Br. Quare Impedit, pl. 24. cites 42 E. 3. 7.

3. Quare Impedit by the *King*, who *made his Title for Alienation in Mortmain* of the Manor to which the Advowſon &c. and the Biſhop of R. preſented his Clerk who was admitted, inſtituted and inducted, and the Biſhop died, and the *King within the Year brought Quare Impedit againſt the Incumbent alone*, and well; for he may plead againſt the King by the Statute, and alſo the Biſhop who now is was no Diſturber, ſo that S. C. cited 7 Rep. 26. b. in Caſe of Hill v. the Biſhop of Bath and Wells.

the Action does not lie against him. Sav. 109. pl. 184. in Case of Hall v. the Bishop of Bath and Wells, cites 47 E. 3. 11.

4. Quare Impedit *against R. L. as Incumbent, and D. C. as Patron*; The *Incumbent said*, that *he was presented* to the same Church *by A. B.* and instituted *and inducted, which A. B. is not named* in the Writ; Judgment of the Writ; Per Brian, the Writ is good; For he has named a Disturber, and the Incumbent is not disturbed by A. B. but by D. C. and there is no Reason to have Action against him who has done no Tort to the Plaintiff. And therefore held good; and so see that the Writ is good against Disturber and Incumbent, though the Disturber is not very Patron. Sav. 109. pl. 184. in Case of Hall v. the Bishop of Bath and Wells, cites 22 E. 4. 44.

But where a *Patronage is gained by the Presentation*, Admission, and Institution of a Clerk, such Patron ought to be named with the Incumbent in the Quare Impedit. Jenk. 200. pl. 18. cites it as resolved.

5. Where there *is no Patron*, there lies Quare Impedit without naming the Patron. Br. Presentation, pl. 23. cites 14 H. 8. 2. per Fitz-James J.

6. Where the *King presents to my Church* when I have Right to present, my Quare Impedit lies only against the Incumbent of the King, without other Patron; but in every other Case of *Common Person*, it must be brought against the Patron and Incumbent. Note, This was said per Frowicke Ch. J. for clear Law. But Marrow said, He had seen Quare Impedit against the Incumbent alone between Common Persons. But Frowicke reply'd, That he never had in his Life. Kelw. 53. pl. 9.

7. In Quare Impedit the Incumbent *pleaded, Quod ipse Nihil habet, nec habere clamat* &c. *Nisi de Presentatione Georgii Sidenham Militis not named* in the Writ, and demanded Judgment of the Writ; upon which, the Plaintiff did demur in Law; And it was argued for the Plaintiff, That the Writ was well brought without naming the Patron; for if a Quare Impedit be brought against the Patron and Incumbent, and the Patron dieth, pendant the Writ, the Writ shall not abate. 9 H. 6. 30. *It might be, that the Plaintiff did not know*, nor could tell *who presented the said Incumbent, but he findeth the Incumbent a Disturber by his Incumbency*; and if of Necessity such Patron ought to be named, then if such an Usurper should die before the Writ brought, he which hath Cause of Action should be Remediless. And by Anderson and Periam, the Writ is good enough for the Reason aforesaid. Le. 58, pl. 83. Mich. 32 Eliz. in C. B. Hall v. Bishop of Bath.

7 Rep. 25. b. Hall v Bp. of Bath and Maunton. The Case was, The Dean of W. was seised of a Vicarage of W. appendant to the Manor of W. in Fee in Right of his Deanry, and presented P. who was inducted, and leased the Manor to the Earl of L. for Years, who assign'd it to Sir G. S. and he granted it to C. R. The Vicarage voided, R. presented D. who was admitted &c C. R. assign'd to H. the Plaintiff. D. was deprived. H. brought Quare Impedit against the Bishop and the Incumbent for disturbing him to present. The Incumbent pleaded, that he claimed nothing in the Advowson of the Vicarage, but is Vicar of the Church of the Presentation of the said G. S. who is alive, not nam'd in the Writ, and demanded Judgment of the Writ; And upon Demurrer it was resolv'd, That the Writ should abate, and that the Patron ought to be named in the Writ; 1st, Because the Patronage will in this Case be recover'd against him that has nothing in the Patronage; and there is no Reason, that he who is Patron shall be ousted thereof, when he is a Stranger, and not Party to the Writ; and especially when, as in this Case, he might be made Party thereto. 2dly, At Common Law the Incumbent could not plead any Plea which concerned the Right of Patronage, and therefore it would be unreasonable that he only should be named in the Writ, who at Common Law could not defend the Patronage; and that he who has the Patronage, and might defend the Right thereof should be omitted in the Writ. But this *Diversity* was agreed, That *when by the Judgment in the Quare Impedit the Inheritance, Estate, or Interest of the Patron in the Patronage is to be devested by the Judgment* in the Quare Impedit brought by J. S. there there J. N. who presented, and his Clerk receiv'd, ought to be nam'd in the Writ *But when* the Inheritance, Estate, or Interest, shall *not be devested by the Judgment, then if other Disturber be nam'd in the Writ*, he need not name the rightful Patron in the Writ; and with this Diversity the Books agree. And after the Plaintiff Hall, perceiving the Resolution of the Court, discontinued his Suit, and lost his Presentation illa Vice. — Sav. 107. S. C. And it seems there, that the Writ was adjudg'd good. See 108. at the End. —— S. C. cited Cro. J. 651. in the Case of Savil v. Thornton. — See (P. c) pl 1. in the Notes. —— 7 Rep. 26. b. cites 7 H. 4. 25, 37. That because the Presentation was only recover'd, and not the Advowson, nor the Patron put out of Possession, the Writ was adjudg'd good without naming the Patron. Ibid. 26. b. — So where the *Patron died before Writ brought*, the Writ is well brought against the Incumbent

Incumbent alone. Ibid. cites 47 E. 3. 11. a. b. —— becauſe by the *Statute* 25 *E.* 3. 7. he is enabled to plead. Ibid. 27. cites Pl. C. 178. b.

8. Quare Impedit, in which the Plaintiff made a Title, for that the Defendant was preſented *upon a Simoniacal Agreement*; The Archbiſhop pleads, That he claimed nothing but as Ordinary; and the Defendant Sowton pleaded in Abatement, that the *Patron* is *not named* in the Writ; and upon Demurrer it was adjudg'd, that he need not, becauſe his Title is not in Queſtion, but is admitted, and the King claims in Affirmance of his Title and Right but by the Offence of the Defendant; and the Patron ſhall not be put out of Poſſeſſion by Recovery in this Action, for he has had the Fruit of his Preſentation; but his Clerk ſhall be remov'd for his Simony, and therefore need not be made Party; per Charlton J. but 3 Juſtices contra, who doubted becauſe the Patron is not only to have his Clerk admitted, but likewiſe to continue. And Reſpondeas Ouſter was awarded. 3 Lev. 16. Paſch. 33 Car. 2. The King v. the Archbiſhop of York and Sowton. 2 Show. 167. pl. 160. S. C.

(B. d. 8) Pleadings. *Count.*

1. IN a Quare Impedit the Plaintiff ought to *declare*, That the Preſentment was made *in Time of Peace*. F. N. B. 33. (K) in the new Notes there (e) cites 18 E. 2. Quare Impedit, 175. In a Quare Impedit the Plaintiff declared, That *Sir George Horner was ſeiſed in Fee* of the Manor of Dowling, to which the Advowſon was appendant; that he *preſented* J. S. who was admitted, inſtituted &c. *and* that afterwards he *granted the next Avoidance to the Plaintiff*; that J. S. died, and it belongs to him to preſent; and upon Demurrer to this Declaration, it was objected, that it was ill, becauſe the Plaintiff *did not allege*, that Sir *G. H.* preſented *Tempore pacis*. And it was admitted, That ſo it ought to be, where the Plaintiff makes his Title by a Preſentation, but here the Title is by being ſeiſed of the Manor, to which the Advowſon is appendant; and ſo the Difference is between Advowſon in Groſs and Appendant. And Per Cur. when one ſhews a Precedent Right, and then alleges a Preſentation in Purſuance of that Right, as here the Plaintiff does in Sir G. H. it needs not to ſay Tempore Pacis; otherwiſe, where no Title is alleg'd, ſo that the Preſentation only makes the Title. Mod. 230. Hill. 28 & 29 Car. 2. Strode v. Biſhop of Bath and Wells, and Sir George Horner and Maſters. 2 Mod. 184. S. C. & P.

2. If a Man *recovers* an Advowſon againſt another *in a Writ of Right*, when the Church voideth he ſhall preſent; and if he be diſturbed, he ſhall have a Quare Impedit, and *allege the Preſentment in him againſt whom he recovered*, without alleging any other Preſentment. F. N. B. 33. (I) *So* a Man ſhall have a Quare Impedit, and *allege a Preſentment by his Proctor*, and it ſhall be good, without alleging a Preſentment in himſelf. F. N. B. 33. (I) cites 17 E. 3.

3. In Quare Impedit the Plaintiff *counted of a Preſentation in the Time of his Predeceſſor, and another in the King who ſeiſed by reaſon of the War between him and France, and that he was reſtor'd*, and well; for the laſt Preſentment did not make him Title, and alſo he ought to make Mention of the laſt Preſentment. Br. Quare Impedit, pl. 19. cites 40 E. 3. 10. Br. Double. pl. 122, cites S. C. — *So of Preſentment of the Guardian*, this does not make Title, and yet he ought to make count upon it. Br. Quare Impedit, pl. 19, cites 40 E. 3. 10. — By which the *Defendant ſaid, That J. F. was ſeiſed of the Manor of D. with this Advowſon appendant, and preſented, Que Eſtate he has, Abſque hoc that the Advowſon is in Groſs, Priſt*; and the *other that is in Groſs, Priſt*. Ibid — *But* by 20 E. 4. 13. and 21 E. 4. 10. *where both Claim by one and the ſame Perſon, the one as Appendant*, and the *other in Groſs*, there the *Appendancy ſhall be travers'd*; but where they claim *by ſeveral Perſons* the *Preſentation ſhall be travers'd*, and therefore the Law ſeems to be where it is in Groſs, as in the preſent Caſe. Br. Quare Impedit, pl. 19. cites 40 E. 3. 10.

4. Quare

4. Quare Impedit by the King, Quod permittat ipſum *Preſentare ad Prebendam vocat. Major Pars Altaris in Eccleſia de Sarum*; and becauſe he *did not ſhew in what Church* in Sarum, *nor of what Saint, nor in what Sarum*, (for there are two Sarums) therefore ill. Br. Quare Impedit, pl. 20. cites 40 E. 3. 17.

5. Quare Impedit by the King, who *counted during the Time that the Temporalties were in the Hands of the King*; the Defendant demanded Judgment of the Count, becauſe *it is not ſhewn for what Cauſe* they were ſeiſed into the Hands of the King; et non Allocatur. Br. Quare Impedit, pl. 23. cites 42 E. 3. 7.

6. Quare Impedit by the *King*, and *counted that B. was ſeiſed of the Manor with Advowſon appendant, and preſented*; and *from B.* the Manor and Advowſon *deſcended to E. and from E. to R.* who now is *in Ward of the King*; and the Church voided, and the King preſented, and the Defendant diſturbed him; The *Defendant ſaid, That there never was ſuch E. in rerum Naturæ*, et non Allocatur; for this is a Miſpriſion in the Meſne Conveyance. *Contra, if he had miſtaken the Name of B. or R. now in Ward*; for thoſe are material, quod nota; and therefore the Writ good. Br. Quare Impedit, pl. 26, cites 43 E. 3. 7.

7. In Quare Impedit the *King counted upon two Preſentments*, by which the *Defendant pleaded it in Abatement of the Count*, et non Allocatur; *Contra*, in Caſe *of a Common Perſon*. Br. Count, pl. 27. cites 43 E. 3. 14.

As Quare Impedit by the King *by reaſon of Ward*, he *counted of Preſentment in the Grandfather of the Infant, and of another Preſentment in himſelf, by reaſon of the Cuſtody* &c. and the *Defendant ſaid, That the Grandfather of the Infant was ſeiſed, and preſented, and gave the Advowſon, and a Manor to which it was appendant, to M. and her Baron in Tail; and the Baron died, and the Church voided, and M. preſented*, and yet the King had Writ to the Biſhop for Default of M. at another Day; but it was held there, that the Plea of M. is no Plea, becauſe ſhe *did not deny the Preſentment of the King upon her*. Br. Quare Impedit, pl. 29. cites 43 E. 3. 14.

Br. Omiſſion. pl. 2. cites S. C.

8. In Quare Impedit the Plaintiff *counted that F. was ſeiſed of a Manor with the Advowſon appendant, and preſented, and made their Deſcent from F. to R.* and *from R. to F.* and *from F. to F.* now Plaintiff; and the *Defendant alleged, that W. was ſeiſed and preſented, and it deſcended to T. who preſented*, and *from T. to W.* who preſented, and *from W. to the Defendant*, and the *Plaintiff voided the one Preſentment by the Nonage of F. and the other 2 by the Nonage of another F.* and the *Defendant alleg'd Omiſſion in one who was Elder Brother to F. thro' whom the Deſcent is made.* Judgment of the Writ, and the Writ awarded good, notwithſtanding an Omiſſion *of one Meſne in the Conveyance* in this Action. Contra, in Writ of Right; and it may be, that he in whom Omiſſion is alleg'd was never ſeiſed, and therefore the Writ awarded good. Brooke ſays, It is a Wonder that all the Preſentments alleg'd by the Defendant were ſuffer'd; for it ſeems to be double at this Day, and alſo it ſeems that he *ought to have traverſed the Appendancy alleg'd by the Plaintiff.* Br. Quare Impedit, pl. 32, cites 44 E. 3. 21.

9. Quare Impedit by two *Coparceners*, and *counted that their Anceſtor was ſeiſed of the Manor of D. to which the Advowſon is appendant, and preſented F. his Clerk, who was inſtituted and inducted, and made the Deſcent to them*; the Church voided, *they preſented B. who was inſtituted and inducted*; and the Church voided, and ſo it belong'd to them to preſent; and ſo ſee they alleg'd two Preſentments, and yet it is not challeng'd for double; and the Reaſon ſeems to be, that they ought to allege one in their Anceſtor for Title, and then ought to ſpeak of the other which they themſelves made, and *one of the Plaintiffs was ſummon'd and ſever'd*; and the *Defendant ſaid, that ſhe who was ſummon'd and ſever'd alien'd her Part to her*, Judgment of the Writ; And after ſhe ſaid, That ſhe alien'd her Part of the Land and Advowſon before the Voidance, and before the Writ brought; And the Plaintiffs ſaid, That they were *ſeiſed of the Advowſon in Common the Day of the Writ purchaſed, Abſque hoc that ſhe alien'd before the Avoidance.* Br. Quare Impedit, pl. 52. cites 11 H. 4. 54.

10. Quare

10. Quare Impedit, and *counted of a Tail of a Manor to his Grandfather, to which the Advowſon was appendant, and that his Father diſcontinued two Parts of the Manor and the whole Advowſon, and that the Right of two Parts of the Manor and the Advowſon deſcended to him as Heir in Tail*, and ſhew'd How; and an ill Count; for the Right of two Parts of the Manor and the Advowſon in Poſſeſſion cannot deſcend; by which he ſaid, That the Right of two Parts of *the Manor and of the Advowſon* deſcended to him, and then well. Br. Quare Impedit, pl. 78. cites 19 H. 6. 30.

11. If the *Declaration be Admiſſus et Inſtallatus, without more*, it ſhall abate. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

12. In Quare Impedit the Plaintiff *counted that A. was ſeiſed of the Advowſon as of Fee, and he took A. to Feme; and the Church voided, and he in Right of A. preſented and had Iſſue and died; and the Church voided again, and he preſented*; and by the Opinion of the Court, becauſe the *ſecond Preſentment is not alleg'd in Right of the Wife*, therefore ill; by which he amended his Count; quære Librum. Br. Quare Impedit, pl. 8. cites 28 H. 6. 8.

13. Where the Plaintiff *counts of ſeveral Preſentments* to an Advowſon in Groſs, this *is not double*; For none of them is traverſable but the laſt; For this makes the Poſſeſſion; and if the *laſt Preſentment be omitted*, the Defendant may plead it to the Count. Br. Quare Impedit, pl. 11. cites 33 H. 6. 32.

14. In Quare Impedit the Plaintiff made to himſelf *Title, becauſe King H. 4. was ſeiſed in his Demeſne as of Fee and Right of the Advowſon in Groſs, and granted* &c. and did *not ſhew whether* he was ſeiſed *in Right of the Crown or by Purchaſe, or by the Dutchy* &c. and yet good, per Cur. for there is no other Form, and ſee that it is ſaid *in Demeſne of Advowſon*. Br. Pleadings, pl. 12. cites 34 H. 6. 34. Br. Count, pl. 18 cites S. C.

15. In Quare Impedit the Plaintiff *ought to allege Preſentation*, and it is not ſufficient to plead a Recovery without it; becauſe it may be that the Recovery was againſt a Deforceor who claimed nothing in the Patronage; but Writ of Right of Advowſon does not lie but againſt the Patron; per Priſot. Br. Judgment, pl. 51. cites 39 H. 6. 23.

16. He who has a *Donative*, or ought to make *Collation*, and is diſturbed, ſhall have *General Writ* of Quare Impedit *Quod permittat ipſum Preſentare*, and ſhall have *ſpecial Count*; for there is no other Form of Writ. Br. General Brief, pl. 24. cites New Nat. Brev. fol. 33. (C) and (D) *So* if he makes Collation, and *does not preſent*. Ibid. pl. 28.

17. The Queen brought a Quare Impedit *upon* the Statute 13 Eliz. cap. 12. which enacted, that no Perſon ſhall be admitted to a Benefice with Cure &c. except he *ſubſcribe the Articles of Religion*, and that all Admiſſions and Inductions otherwiſe ſhall be void; The Church remained void for two Years, and then the Queen preſented, but in the Count it was *not alleged, that the Church* to which the Defendant was preſented *was* a Church *with Cure*; and upon Demurrer to the Declaration it was held ill. And. 62. pl. 136. Trin. 24 Eliz. The Queen v. the Biſhop of Lincoln and Cock.

18. Quare Impedit lies to preſent *to two Parts of the Church of &c.* for in a Church there may be ſeveral Portions to which Preſentations may be made; as A. may have the 1ſt. B. the 2d. and C. the 3d. Part, and divers Patronages and Advowſons thereof, and if diſturbed may have Quare Impedit, and declare of a Seiſin of the 1ſt. or 2d or 3d. Part, as the Caſe requires. And therefore the Plaintiff in the principal Caſe having declared *that J. S. was ſeiſed of the Advowſon of the ſaid two Parts of the Church aforeſaid, and preſented &c.* All the Judges held the Writ good, and well maintained by the Declaration; But if he had not declared of the Seiſin of the Advowſon of the two Parts, but that the Declaration had been *(that he was ſeiſed of the two Parts and preſented)* according as the Writ mentioned it, the Writ and Declaration would

be abated. 2 And. 23. pl. 16. Paſch. 37 Eliz. Stanhopp v. Biſhop of Lincoln.

(B. d. 9) Quare Impedit. Pleas. Good *in General.*

Br. Alienation, pl. 7. cites S. C.

1. QUARE Impedit by the King; the *Tenant of the King had Iſſue three Daughters and died*, and the *Tenements came to the King by his Prerogative*, and *Partition was made in Chancery*, and this *Advowſon allotted to the one who took Baron and had Iſſue and died, and the Iſſue within Age and in Ward of the King*, and the *Prebend voided, and the King preſented.* The *Defendant ſaid, that after this the three Daughters made Partition to preſent by Turn, and that the firſt had her Turn, and* after the *ſecond, and* the *third took the Defendant to Baron, and had Iſſue and died, and this Voidance now belongs to him as Tenant by the Curteſy, and ſhewed the Compoſition*; and becauſe by the firſt Partition in Chancery the King was aſcertained of his Tenant of Record, and *this new Partition, without Licence of the King, is an Alienation in Law without Licence*, therefore Judgment pro Rege; For it was agreed, that though Partition be made between Parceners, yet they are in by their common Anceſtor, and may vouch as Heir, and have every one Advantage as Heir, yet by the Partition in Chancery the one was ſole Tenant of the Advowſon, and by the laſt Partition to preſent by Turn all are Tenants thereof, and Writ of Right of Advowſon ſhall be brought againſt all, and before again the one alone, and ſo the King has a Stranger to his Tenant; Quod Nota; and therefore the King recovered. Br. Quare Impedit, pl. 73. cites 21 E. 3. 30, 31.

Br. Eſtoppel, pl. 75. cites S. C.

2. Quare Impedit by the *King*, and *made Title by Non-age of T. Son of J. W.* and the Church voided, becauſe M. H. the *Incumbent* thereof, *was created Biſhop* of E. Mombray ſaid, the Church did not void, the Advowſon being in the Hands of the King. But Norton ſaid, to this he ſhall not be received, and *pleaded certain Eſtoppel that the King had certified the time of the Seiſure, and the Age of the Infant, and what Day H. was ſworn Biſhop of E.* and that a certain Year the Biſhop was Treaſurer of the King, and Commiſſion made to him by Name of Biſhop of E. to go in a Meſſage of the King to Rome, and ſhewed Record which proved the Tenure and the Age of the Infant, and that he at Requeſt of the Great Men had received the Homage of the Infant, and made him Livery within Age; and there it is agreed, that where the King *makes Livery to the Infant within Age generally, Fees and Advowſons* do not paſs without ſpecial Words; but contra of Livery made at full Age, and upon the Livery made within Age above were no ſpecial Words of Fees and Advowſons, by which it was awarded, that the King have Writ to the Biſhop. Br. Quare Impedit, pl. 74. cites 21 E. 3. 39, 40.

Br. Quare Impedit, pl. 97. cites S. C.

3. In Quare Impedit, the King made *Title to preſent to a Prebend, becauſe the Temporalties of the Biſhop were in his Hands by reaſon of the Death of R. late Biſhop* &c. The *Defendant ſaid*, That *Ne voida pas the Temporalties being in the Hands of the King by the Death of R.* this is a *Pregnancy*; for it ſuffices for the King if it be in his Hands by any other Cauſe. Br. Negativa &c. pl. 26. cites 24 E. 3. 55.

4. In Quare Impedit the Defendant ſhall not have his *Age*; nor *Protection nor Eſſoign de Servicio Regis does not lie*, nor ſuch Dilatories, becauſe the Lapſe ſhall not incur. Br. Quare Impedit, pl. 116. cites 43 Aſſ. 21. per Thorp J.

Br. Quare Impedit, pl. 46. cites S. C.

5. The *Plaintiff intitled himſelf by Preſentation by A. who granted to him*, and the *Church voided*, and *he preſented*, and the *Defendant diſturb'd*

turbed him ; and the *Defendant ſaid, That after this Preſentment A. was ſeiſed and preſented &c. and granted the Advowſon to the Defendant, and the Church voided, and he preſented* ; and well, without ſhewing How A. came to it again after his firſt Grant. Br. Confeſs and avoid, pl. 10. cites 3 H. 4. 15.

6. In a Quare Impedit by the King it is a good Plea to *ſhew that ſuch a one was ſeiſed and preſented, and the Incumbent admitted and inſtituted and died, and the Patron* * [*preſented*] *this Incumbent who was admitted and inſtituted*, in whoſe Poſſeſſion the *King* by his Letters Patents which he ſhewed ratified, and *confirmed his Eſtate*; Judgment if the King will impeach him, and a good Plea. Br. Quare Impedit, pl. 61. cites 14 H. 4. 36.

* Quære this? For the Year-Book and Fitzh. tit. Qua. Imp. 123. ſeem not clear.

7. In Quare Impedit it was agreed, that a *Chantery* may be founded without the Aſſent or Licence of the Ordinary, and where the *King made Title by the Temporalties of the Biſhop of L. to the Chanteries of St. T. in O.* the *Defendant ſaid, That he and his Anceſtors Time out of Mind have been Patrons of a Chantery of St. T. in the ſame Vill*, and alleged Preſentment in his Anceſtor, *abſque hoc that this A. by whom the King claims founded any Chantery there*, and no Plea, becauſe he *did not plead of the ſame Chantery* ; For it may be another Chantery for any thing that is contained in the Plaint of the Defendant, and if the Defendant had pleaded that No ſuch Church in the ſame County, there the Plaintiff ſhould have had Writ to the Biſhop ; Per Cur. Quod Nota. Br. Quare Impedit, pl. 5. cites 9 H. 6. 16.

8. In Quare Impedit the Defendant prayed *Aid of the King*, and had it *upon Charter ſhewn, in lieu of Voucher*, and yet it was agreed, that it is an Action which does not die with the Perſon ; For the Heir ſhall not have Action of Diſturbance in the time of his Father ; and it was agreed, that a Man *cannot vouch a Common Perſon* in Quare Impedit, *but ſhall have Warrantia Chartæ*, and in lieu of this, Voucher of the King ; for Action does not lie againſt the King. Br. Quare Impedit, pl. 7. cites 9 H. 6. 56.

9. In Quare Impedit the Defendant *ſaid, That the Incumbent was preſented, living the other Incumbent*, and ſo is in by Spoliation. Br. Quare Impedit, pl. 13. cites 33 H. 6. 26. in a Note.

10. If I grant *the next Preſentation to J. N. which he enjoys accordingly*, there, if *at another Voidance the Grantee diſturbs, and alleges the laſt Preſentment in himſelf*, the *Grantor may confeſs and avoid it*, by Reaſon that it was but for one Turn only. Br. Confeſs and Avoid, pl. 49. cites 13 E. 4. 2.

11. *If a Man pleads*, or otherways ſays *that ſuch a Church is void*, he *ought to ſhew How* it voided, viz. *By Reſignation, Death, or* otherwiſe by *Deprivation* &c. For if it voids by Death, it ſhall be try'd Per Pais ; and if by Deprivation, Reſignation, Creation, or otherwiſe, this Voidance ſhall be tried by the Ordinary. Br. Quare Impedit, pl. 85. cites 15 E. 4. 25. Per Jenny.

12. Quare Impedit by the *Lord H. and M. his Feme, againſt the Biſhop, W. H.* and others, and *counted that certain Perſons were ſeiſed of the Advowſon in groſs to the Uſe of the Plaintiff's and the Heirs of the Feme, who granted the Advowſon to R. who granted* the Advowſon *to the Plaintiff and the Heirs of the Feme*, and ſhew'd Preſentment, and that the Church voided &c. And *the Biſhop*, the *Patron*, the *Incumbent, and all the others join'd in Plea, and ſaid that the ſaid Feoffees were ſeiſed to the Uſe of the ſaid W. H. and his Heirs Males, and that they preſented abſque hoc, that they were ſeiſed to the Uſe of the Lord H. and his Feme.* And Per Keble, The Plea is not good, inaſmuch as the Patron, Biſhop and Incumbent have join'd in Plea where they ought to have ſever'd ; and alſo he ſaid that the Feoffees were ſeis'd to the Uſe of W. H. in Tail, and *does not ſhew the Commencement of* it, inaſmuch as it is of *a ſpecial Eſtate*, and

and alſo *W. H. has pleaded to the Right* of the Patronage, *where it* appears that he *is not Patron*; and therefore *ought to have ſaid* that *Ne diſturba pas*. Br. Quare Impedit, pl. 165. cites 13 H. 7. 18.

13. If 4 *Jointenants bring Quare Impedit*, and the one will not ſue, he ſhall be *ſummon'd and ſever'd*; but if he will *vary in Title*, there the *Writ ſhall abate without Remedy*; for then it appears that they have join'd upon ſeveral Titles; quod nota. Br. Quare Impedit, pl. 2. cites 26 H. 8. 5.

Le. 194 pl. 258. Mich. 31 & 32 Eliz. C B. Arundel v. Biſhop of Glouceſter and Chaffin. S. P. and ſeems to be S C. and the Plea was held inſufficient; for the Plaintiff *counted upon a a Diſturbance to him 1ſt November*, and the *Defendant intitled himſelf to an Incumbency 1ſt May after*; ſo that the Diſturbance ſet forth in the Count, is not anſwered by Traverſe, nor confeſs'd nor avoided; for the Diſturbance whereof the Plaintiff declared is confeſs'd. Afterwards it was mov'd that the Queen might have Writ to the Biſhop, becauſe her Title appears to be by Lapſe, which is confeſs'd. But the whole Court were clear of Opinion againſt it; for tho' it appears that he was lawfully preſented to the ſaid Church, and ſo once lawful Incumbent, yet it appears alſo, That the *Queen's Title is once executed, and ſo gone, and nothing remains in her*; and now when the *Defendant has loſt his Incumbency by ill Pleading* (as he may as well as by Reſignation or Deprivation) *the ſame ſhall not turn to the Queen's Advantage*; for where the Queen preſents for Lapſe, and her Clerk is Inſtituted and Inducted, ſhe has no more to do, *her Clerk muſt ſhift as well as he can for the holding of it*; for by what Manner ſoever he loſeth the Incumbency, *ſhe ſhall not preſent again*; otherwiſe it had been if ſhe had been Patron. And afterwards the Plaintiff had a Writ to the Biſhop.

14. In a Quare Impedit the Plaintiff declared, that the Church was void, and that the Defendant diſturb'd him to preſent; the Defendant pleaded, that the *Church* was *void by Acceptance of another Benefice with Cure* &c. *and that thereby the Right of Preſentation devolved to the Queen by Lapſe*, upon Default of the Ordinary and Metropolitan &c. and *that ſhe preſented the Defendant, who was Admitted and Inducted*; and upon a Demurrer the Court ſaid that every Writ, Declaration and Action ought to be anſwer'd by Way of Plea; that in this Caſe the Plaintiff alleges a Diſturbance by the Defendant, which is not any how anſwer'd; for when the King preſents &c. pending the Writ, this can be no Anſwer to the Action or Grief of the Plaintiff done to him before. Whereupon they gave Judgment for the Plaintiff. And. 238. pl. 255. Stanley v. Chaffin.

See (Q. a. 2)

(B. d. 10) Pleading *Plenarty*.

1. 13 *E.* 1. *cap.* 5. By the Common Law *Plenarty*, before the Writ of Quare Impedit brought, was a good Plea, but Plenarty hanging the Writ was no Bar at the Common Law; but now by this Statute Plenarty is no Plea in a Quare Impedit or Darrein Preſentment, unleſs it be by the Space of ſix Months before the Quare Impedit brought; for if the rightful Patron bring his Action within the 6 Months, it is maintainable by this Statute, which ſhort Purview doth remedy many Miſchiefs at the Common Law. 2 Inſt. 360.

ENACTS that *from henceforth* one Form of Pleading *ſhall be obſerved among Juſtices in Writs of Darrein Preſentment and Quare Impedit, in this Reſpect if the Defendant allegeth Plenarty of the Church of his own Preſentation, the Plea ſhall not fail by Reaſon of the Plenarty, ſo that the* Writ be purchas'd within 6 Months, *tho' he cannot recover his Preſentation within the 6 Months.*

But this Act doth *not bind the King*; for Plenarty by the Space of ſix Months is no Bar againſt him, but he may have his Quare Impedit when he will; for Nullum tempus occurrit Regi. 2 Inſt. 361.

But ſome have taken a *Diverſity when* the King claimeth the Advowſon in his own Right *in Jure Coronæ, and when* he claimeth it *in the Right of a Subject*; for then he ſhall not be in better Caſe than the Subject was; As where the King was intitled to preſent in the Right of a Ward, and one did uſurp, and the Church was full by the Space of ſix Months; and it was adjudged within 12 Years after the Making of this Act, that the King by this Plenarty was barr'd of this Quare Impedit; but ſince that Time the Law hath been otherwiſe taken. 2 Inſt. 361.

Plenarty by 6 Months *againſt the Queen* is a good Plea, *albeit ſhe claim* the Advowſon *by the King's Indowment*. 2 Inſt. 361.

And yet in All Caſes, Plenarty by ſix Months is no Plea in a Quare Impedit; [As] if an Advowſon be alien'd in *Mortmain*, and the Church becomes void, and a *Stranger uſurps*, and his Clerk is in by ſix Months, yet the immediate *Lord ſhall have a Quare Impedit within the Year*; for the Statute of 7 E. 1. De

De Religioſis, giveth him a Year, and the immediate Lord half a Year after &c. and for that Cauſe alſo no Deſcent of Lands in the mean Time ſhall take away his Entry. 2 Inſt. 361.

(B. d. 11) Pleadings *by* the *Biſhop*.

1. QUARE Impedit by Sir J. Denham *againſt the Biſhop of E. and T.* Chanon, and *counted that the Advowſon of the Abbey of* St. Edes, *was Appendant to his Manor of Hatland, and that W. his Father preſented one B. Chanon of the Abbey, who of his Preſentment was Admitted and Inſtituted, and convey'd the Manor to him by Deſcent, and that the Abbey voided by the Death of B. and he preſented, and the Defendant diſturb'd him; the Biſhop ſaid that by the Foundation the Abbot is elective by the Prior and the Monks who preſent him to the Biſhop, and he ſhall examine and admit*, and if he be able, then the Biſhop ſhall admit and inſtal, and put him in corporal Poſſeſſion, *and that the Abbey voided by the Death of B. and they elected C.* and he upon the Preſentment of him made to him, examined and found him able, and admitted and inſtall'd him &c. and ſo *claim'd nothing but as Ordinary*; Judgment if without ſpecial Diſturbance, Tort &c. It is no Plea *without traverſing the Title of the Plaintiff*; for *where he ſhews Title in Deſtruction of the Title of the Plaintiff, he ought to traverſe* &c. *or confeſs and avoid* the Title of the Plaintiff, *notwithſtanding that he claims nothing but as Ordinary*; by which *afterwards he travers'd* abſque hoc, *that the ſaid B. was admitted and inſtituted by the Biſhop of E. at the Preſentment of W. Father of the Plaintiff*; and the other e contra. And per Port, The Biſhop *as Ordinary cannot plead any Plea which touches the Right of the Patronage*, but a *Diſturber may*, and here the Biſhop is Diſturber; for it appears that the *Plaintiff preſented to him, and alſo the Prior, and he accepted the Preſentation of the Prior without inquiring De Jure Patronatus*, and therefore a Diſturber, quod Newton and Paſton conceſſerunt, that he ought to have inquir'd &c. as well as between two Patrons. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

2. Quare Impedit was brought by H. againſt B. and the Biſhop and the Incumbent, and *counted that he was ſeiſed of the Advowſon as in groſs, and this as of Fee and of Right* &c. *Tempore Pacis &c. and died &c. and the Church now voided &c. and he preſented, and the Defendants diſturb'd him*, and the *Biſhop ſaid that he claimed nothing but Admiſſion, Inſtitution and Induction*; and prayed Judgment if without ſpecial Diſturbance &c. and the *Plaintiff ſaid that the Church voided by the Death of J. N.* as above, *and that he preſented ſuch a Day, Year and Place W. P. his Clerk, and required him to admit him, and he refus'd*, and ſo diſturb'd him &c. to which *the Biſhop ſaid that the Defendant preſented ſuch a Day, and that after in the Feaſt of St. Hugh the Plaintiff preſented, by which he refus'd, and made Inquiry De Jure Patronatus*, (which was afterwards adjudg'd no Plea, becauſe he *did not ſay what End the Inquiry took*) *which Refuſal in the ſaid Feaſt* of St. Hugh &c. *is the ſame ſpecial Diſturbance* &c. *abſque hoc, that he refus'd after the ſaid Feaſt*, & hoc &c. to which the *Plaintiff ſaid that he ſuch a Day and Place after the Feaſt aforeſaid, required him to admit* &c. *and he refus'd*; and upon this they were at Iſſue; and after by the Opinion of the Court the *Iſſue is misjoined*, and the Plaintiff has *departed from his firſt Plea*; for he *alleg'd Diſturbance ſuch a Day, which the Biſhop has juſtified*, and he comes *and alleges another Diſturbance, by another Refuſal another Day*, and therefore this is a Departure; by which they repleaded; and the *Biſhop ſaid that the Defendant preſented E. his Clerk the ſame Day that the Plaintiff preſented F. his Clerk, and ſo*

Br. Traverſe per Sans, pl. 21. cites 33 H. 6. 13. 14. S. C. —— Br. Nugation, pl. 3. cites S. C.

the Church became Litigious; and that the Law of Holy Church is, that *when it is Litigious, the Ordinary is not bound to preſent till it be inquired De Jure Patronatus, and this at the Suit of the one Patron or the other, or their Incumbent; and that if the* 6 *Months paſs, that he preſent by Lapſe, and none required him within the* 6 *Months, by which he made Collation to one T. his Clerk by Lapſe,* & hoc &c. and demanded Judgment &c. and upon this the *Plaintiff demurr'd*; and there it is agreed that the Jure Patronatus *ſhall be ſued at the Coſts of the Party or his Clerk,* and the Biſhop is not bound to be at the Coſts, for he is Judge in this Caſe; but where the Court writes to the Biſhop to certify Baſtardy, or Matrimony, or the like, there he ſhall do it at his own Coſts; for there he is a Miniſter. But per Littleton, The Juſtices of the Special Aſſiſe are not bound to ſit without their Fee, nor the Chancellor to make Writs without his Fee for the Writing &c. And afterwards it was adjudged that *to ſay that the Church was Litigious,* as above, *and the* 6 *Months paſs'd, and he made Collation by Lapſe, is a ſufficient Plea* without the other Matter of the Jure Patronatus, which is alleg'd before; but this is only Surpluſage, and the Plea is not the worſe; for the Jure Patronatus is only for the Excuſe of the Biſhop, therefore it ſeems it had been a good Replication for the Plaintiff to have ſaid, that he or his Clerk required to have Jure Patronatus, and he refus'd; and therefore as to the Biſhop, Judgment was given that the Plaintiff take nothing by his Writ. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12 & 32. 34 H. 9. 11. 38. & 35 H. 6. 18.

Br Office devant, pl. 11. cites S. C.

3. Quare Impedit by the *King* againſt the Ordinary, and *counted that W. N. was ſeiſed of the Manor of S. with the Advowſon appendant, and preſented J.* &c. who was Admitted, Inſtituted and Inducted &c. *and gave the Manor with the Advowſon to E. L. in Tail,* the *Remainder to the right Heirs of W. L. in Fee* &c. and that ſuch a Day and Year it was *found before the Eſcheator* &c. *that the ſaid E. L. died ſeiſed of the Manor in Tail, and* that *the Manor was held of the King in chief, and* that *T. L. is Son and Heir within Age* &c. *and* that *ſuch a Day and Year the Church voided, and the King preſented B. and the Biſhop diſturb'd him,* and *the Biſhop ſaid Proteſtando that E. L. died ſeiſed in Fee of the ſaid Manor, and Pro Placito that E. L. gave the ſaid Manor to M. and others in Fee ſaving the Advowſon, and after E. L. granted the next Preſentation to Butler, and after M. and the others gave the Manor to E. L. and his Feme and Lewis E. and after E. died, and the Church voided, and B. preſented to him C. at D. he being ready to take Horſe; and the Biſhop commanded him to attend upon him at N. within the ſame Dioceſs within three Days, to examine him* and inquire his Ability; *and he did not come, nor ſix Months after, by which the Biſhop made Collaiton by Lapſe, abſque hoc that W. L. gave the ſaid Manor to E. L. in Tail* Priſt &c. And afterwards Anno 15 H. 7. 7 and 8. all the Juſtices at Length held, That the Ordinary ſhall have *Time to be adviſed*; for *in the Examination he is Judge and not Officer,* and he ought to give him Time and Place convenient, and need not give Notice to the Patron that he did not come to be examined; for he has not refus'd him. Br. Quare Impedit, pl. 91. cites 14 H. 7. 21. and 15 H. 7. 6. 7. & 8.

(B. d. 12) Pleadings *by Incumbent.*

The Incumbent *ſhall not* by this Statute *have Traverſe to*

1. 25 *Ed.* 3. *Stat.* 3. *cap.* 7. ITEM, *Becauſe that many Preſentments to divers Benefices of Holy Church, as well of the Patronage of Lay People as of People of Holy Church, which are void by ſix Months, whereof the Collation of ſuch Benefices by Lapſe of Time was devolute, and of Right pertaining*

*pertaining to the Ordinaries of the Places, were recovered by the King by Judgments thereof given, of the Aſſent of the ſaid Patrons, in Deceit of the ſaid Collations ſo made reaſonably by the ſaid Ordinaries, in which Pleas the Ordinaries nor their Clerks, to whom they did give ſuch Benefices, were not received to ſhew nor defend their Right in this Behalf, nor to counterplead the King's Right ſo claimed, which is not reaſonable; wherefore the King, by the Aſſent of the Parliament, willed and granted for him and his Heirs, that when Archbiſhops, Biſhops, or other Ordinaries, have given a Benefice of Right devolute to him by Lapſe of Time, and after the King preſenteth and taketh his Suit againſt the Patron, which per-caſe will ſuffer that the King ſhall recover without Action tried, in Deceit of the Ordinary, or the Poſſeſſor of the ſaid Benefices, that in ſuch Caſe, and all other Caſes like, where the King's Right is not tried, the Archbiſhop or Biſhop, Ordinary or Poſſeſſor, ſhall be received to * counterplead the Title taken for the King, and to have his Anſwer, and ſhew and defend his Right upon the Matter, although that he claim nothing in the Patronage in the Caſe aforeſaid.*

the Title of the Plaintiff, unleſs the King be Plaintiff; and the Miſchief was, that tho' the Incumbent had been 20 Years in Poſſeſſion, yet if the King had brought Quare Impedit againſt him and another as Patron, who would not appear, the King ſhould have ouſted the Incumbent, becauſe Nullum Tempus occurrit Regi, and for that Reaſon was the Statute made. Fitzh. Tit. Incumbent, pl. 11. cites M. 10 H. 4.

The Confeſſion of the Patron or ſuppoſed Patron, before this Statute bound the Incumbent, but now the *Incumbent may plead the Title of the Patron*, but the *Ordinary cannot*; for the Statute does not extend to him. Jenk 25. pl. 47.

Scire facias upon a Recovery by the King in Quare Impedit; the *Incumbent Defendant ſaid, that after the Judgment J. N. Preſentee of the King, was inſtituted and inducted by the Biſhop by the ſame Judgment* &c. And per Haſty, The ſame Statute which gives the Incumbent to plead againſt the King in Quare Impedit, gives him Anſwer in Scire facias upon Judgment therein, quod non negatur; by which they were at Iſſue; quod nota. Br. Incumbent, pl. 4. cites † 46 E. 3. 13.——† S. C. Cited 2 Le. 85. pl. 112. in Caſe of Ognel v. Paſton.——S. P. Fitzh. Tit. Incumbent, pl. 10. cites H. 50. E. 3.——7 Rep 26. cites S. C. and ſays, The Miſchief before this Statute was, That by the faint Pleading or Confeſſion of the Patron in Quare Impedit, the Incumbent was without Remedy; but that this Statute enables the Poſſeſſor &c. (which is the ſame Thing as to ſay the Incumbent after Induction, as was held ‡ D. 1. 4 H 8.) to counterplead the Title taken for the King, and to have his Anſwer &c. 7 Rep. 26. a. Paſch. 31 Eliz. Caſes of Quare Impedit.——‡ This Caſe is D. 1. b. pl. 8. **Bataile v. Cook**, where the Patron claimed Title to the Advowſon by the Anceſtor of the Plaintiff; and the Incumbent would have pleaded the ſame Plea, but was ouſted by this Statute, which enables the Poſſeſſor to plead in Bar, but in this Caſe the Incumbent was not inducted, and *before Poſſeſſion he is not Incumbent*, and ſo could not plead Ne diſturba pas &c.

* This is *intended where Action is commenc'd*; for *if an Incumbent be in, and is ouſted by Admiſſion and Induction of the Incumbent of the King*, he has no Remedy but to ſue by Petition to the King. Br. Incumbent, pl. 7. cites 2 H. 4. 17.

The particular *Cauſe of this Law*, is for the Relief only of the Ordinary that hath collated by Lapſe, and of the Clerk that is ſo collated, that they may both plead to the Title againſt the King, which, when you conſider it, was a neceſſary Law as againſt the King more than againſt Common Patrons; for the King not being bound by Lapſe of Time, if the common Patron ſuffered a Lapſe, and the Biſhop collated lawfully, yet if the King pretending himſelf Patron, brought a Quare Impedit againſt the Ordinary and Incumbent, there was no Means for them to ſave themſelves, ſince they could not deny the King's Title and maintain the Patron's, in whoſe Default the Lapſe took Place; but the Statute gives Remedies likewiſe in like Caſes, by expreſs Words; ſo that *Caſes of like Nature are rather remedied by Letter than Equity*. And therefore firſt *in the Caſe of Lapſe, a common Perſon* might by Practice have turned out a lawful Collatee in one only Caſe, and that was this, A common Perſon, *no true Patron, preſents within 6 Months*, and the *true Patron himſelf preſents not in Time*; whereupon the *Ordinary collates* by Lapſe, againſt whom the *Pretender brings a Quare Impedit*, becauſe his Clerk was refuſed, wherein he muſt needs prevail, if *his Title* be good, and it *muſt be taken for good, becauſe neither Ordinary nor Incumbent could deny it*; for De non apparentibus & de non exiſtentibus eadem eſt ratio. This is one of the like Caſes meant in the Statute; for all in other Caſes the Lapſe is an equal Title againſt all common Perſons. But the commoneſt like Caſe, and that which extends fartheſt, is the Purview; for every Incumbent that is called a Poſſeſſor, as well by Preſentment as by Collation, is allowed by the Words of the Law to counterplead the King's Title, and to ſhew and defend his own Right upon the Matter, tho' he claim nothing in the Patronage in the Caſe aforeſaid; Note *all the Words*, for they *have all their Weight*; for firſt the *Incumbent muſt be a Poſſeſſor*; ſo that if he have his Preſentation, Admiſſion and Inſtitution upon the lawful Title, yet he remains as he was before, under the Miſchief of the Common Law, becauſe he is not a Poſſeſſor according to the Letter of the Law, but *by Induction*. And further, That tho' he be a Poſſeſſor, *he muſt*, by the Letter and Meaning of this Law, *as well ſhew* and defend *his own Right as counterplead his Adverſary's*; and therefore clearly he cannot make himſelf Parſon Imparſonee of the Preſentation of J. S. and defend himſelf by the Title of J. D. under whom he claims not, though that were ſufficient to deſtroy the Plaintiff's Title, by Confeſſing and Avoiding, or the like; Neither can he counterplead the Plaintiff's Title, but muſt alſo make a Title to himſelf by the Word and Meaning of this Law, which I ſpeak not to bind the Incumbent by the Patron's Plea, whereof I will ſpeak hereafter when I come to the Incumbent's Plea; but touching Plea of the *Ordinary* upon this Statute, I hold plainly that he *can no otherwiſe plead than* he could *at the Common Law, but only where he*

he hath collated actually by Lapſe; for tho' the Incumbent in by Preſentation be alſo admitted to plead by the Meaning of this Law under the Word (Like Caſe,) becauſe the Caſe is like indeed, yet the Ordinary's Caſe before Actual Collation, is no ways like in Caſe; for he hath gotten no Intereſt for himſelf nor his Clerk in the Church. And therefore if the Incumbent, inſtituted only at the Preſentation of another, be not within the Relief, much leſs ſhall the Ordinary, that hath no Intereſt, but an Office only, that ought to be indifferent to all Patrons, and maintain no Side. And yet more, *if the Incumbent* which is inducted, be Defendant in Quare Impedit (which may plead by the Statute) and do *reſign hanging the Writ, he hath loſt his Privilege of pleading to the Title by the Statute*; for as it was granted him to defend his Poſſeſſion, ſo when his Poſſeſſion is gone, there is no Cauſe for him to uſe it, which Reaſon alſo turns ſtrongly againſt the Ordinary, where there is no Poſſeſſion under him; for *yet* that Incumbent that hath reſigned *may plead, as he might have pleaded at the Common Law.* And Note that Caſe of the Perſon reſigning hanging the Writ, which the Perſon may plead againſt him, to defeat him of his Plea that he might once have had hanging the Writ; whereas in a Præcipe quod reddat, if the Tenant plead a Releaſe, the Demandant cannot ſay that he had aliened hanging the Writ, but is eſtopp'd; the Difference is, becauſe in that Caſe of the Præcipe, the Demandant by his Writ admits him Tenant, but in the Quare Impedit he is not named an Incumbent, but a Diſturber only. Neither is the Suit for the Incumbency directly, but for the Patronage or Preſentation; and therefore in the Writ of Right of Advowſon, the Incumbent is never named; neither, if the Defendant recover againſt his Patron, ſhall he be removed. Per Hobart Ch. J. who ſaid that he had been the larger in this Diſcourſe, becauſe he ſaw the Inheritances of Advowſons ſo incumber'd by wilful Uſurpations, and Diſturbances of pretended Patrons, Ordinaries and Clerks, and the Multiplicity and Perplexity of ſeveral Pleas of the Defendants, be they never ſo many, whereof, if any one paſs againſt him, he is barr'd, and the Uncertainty and Variety of the Learning upon it, that it is almoſt impoſſible, if a true Patron be put to his Action, but he will be tired. Hob. 319. 320. Sir William Elvis v. Archbiſhop of York.

Br. Quare Impedit, pl. 66. cites S. C—Br. Encumbent, pl. 5 cites S. C——

2. The Incumbent ſhould not have anſwered *to the Title of the* Patron *by the Common Law* in Quare Impedit, *but* now *by the Statute* he ſhall plead if the Patron pleads faintly; but where his *Patron* is *bound by Judgment*, or ſuch like, the Incumbent is bound likewiſe. Br. Encumbent &c. pl. 8. cites 38 E. 3. 31. Per Thorpe.

Fitzh. Tit. Encumbent, pl. 4. S. P. cites M. 2. R. 2.

S. P. But if it had appeared, then he ſhould not be permitted to plead where the Patron pleads, and therefore both Iſſues were taken; and ſo ſee that the *Statute is not intended that the Incumbent ſhall plead, but where the Patron makes Default*, or will not plead; quod nota, good Reaſon. Br. Encumbent &c. pl. 13. cites 39 E. 3. 30.——S. C. Cited 7 Rep. 26. a. in Caſe of Hall v. the Biſhop of Bath and Wells.

3. Quare Impedit *againſt T. & J. N. who was Incumbent*, and *Counted of the Preſentation of his Predeceſſor*, and *T. traverſed the Preſentation, and made Title to have Writ to the Biſhop*, and *J. N. pleaded the ſame Plea*; And there it is ſaid, That *at the Common Law*, the Incumbent ſhall have no Plea, becauſe he has nothing in the Advowſon, and the Statute was for the Miſchief, that if the Patron would not plead, the Incumbent might plead; But now, when the Patron pleads, there is no Miſchief, and therefore the Incumbent need not to plead; But Brooke makes a *Quære*, if the Patron will maintain the Iſſue faintly; And after, becauſe it did not appear by the Writ *that he is Incumbent*, but ſtands indifferent, and where ſeveral are named, it may be that all are Patrons, therefore the Plea was ſuffered; quod nota. Br. Quare Impedit. pl. 104. cites 39 E. 3. 20.

So the *King* in a Quare Impedit *counted that King H. was ſeiſed, and preſented one A* and *that King H. died, and ſo the Advowſon deſcended to himſelf*; *that A died, and he preſented B and that now B is dead*, and ſo it belongs to him to preſent. The Defendant being *Incumbent, travers'd the Inſtitution and Induction of B. without making Title to himſelf.* Arg. Le. 46. pl. 58. cites 47 E. 3. 8.

4. In Quare Impedit by the King the *Count* was, *that the King* himſelf *was ſeiſed, and preſented one B.* who at his Preſentment was received &c. and *that B. died*, by which it belonged to the King to preſent; The Defendant being the *Incumbent pleaded that the ſaid B. is ſtill alive*; And that Plea was allowed without any other Title made to himſelf. Arg. Le. 46. pl. 58. cites 43. E. 3. 19.

In Quare Impedit the Incumbent ſhall plead *againſt the King by the Statute*, and *againſt a * common Perſon by the Equity*; and Quare Impedit lies not againſt the Incumbent alone, but where the Pope or the King preſents. Br. Encumbent, pl. 17. cites 9 H. 6. 30.——S. P. Per Babbing-

5. Note, by the Opinion of all the Juſtices that in *Quare Impedit* brought by another than the King *againſt Patron and Incumbent*, the *Incumbent ſhall not have Anſwer to the Title of the Patron*, becauſe *the Statute does not give it but againſt the King. Contra*, it is held *at this Day by the Equity of the Statute.* Br. Encumbent. pl. 3. cites 44 E. 3. 12.

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ton; But per Paſton he might have pleaded againſt a Common Perſon by the Common Law, but not againſt the King Br. Quare Impedit. pl. 6. cites S. C.—— S. C. & P. cited 7 Rep. 26. in the Caſe of Hall v. the Biſhop of Bath and Wells — * S. P. Pl. C. 178. b. Mich. 4to. Mariæ in the Caſe of Hill v. Grange.

6. An Incumbent ſhall plead *all Pleas ſave thoſe which go to the Right of the Patronage*, and this it ſeems *by the Common Law, but* now *by the Statute* he may plead of the Title of the Patronage. Per Brudenel Ch. J. Br. Encumbent &c. pl. 11. cites 14 H. 6. 31. S. P. per Brud. Ch. J. Br. Preſentation, pl. 23. cites 14 H. 8. 2.

7. If the *Patron* would *confeſs the Action* or Title, yet the *Incumbent may plead in Bar*. Br. Encumbent &c. pl. 11. per Brudenel Ch. J. cites 14 H. 6. 31.

8. Quare Impedit, the *Defendant ſaid, That T. H. is ſeiſed of the Manor of D. to which the Advowſon was and is appendant, and* the Church voided by the Death of G. and *T. preſented him, by which he was admitted 6 Months before the Writ purchaſed*, Judgment Si Actio. And per Danby he is only Incumbent, and therefore the Plea does not lie in his Mouth; But per Newton & Cur. the Patron may have the Plea, and ſo may the Incumbent, the Reaſon ſeems to be in as much as *by the Statute* the Incumbent may plead. Br. Quare Impedit. pl. 146. cites 22 H. 6. 14. But Br. Quare Impedit, pl. 134. cites 16 E. 4. 11. it was held per tot. Cur. that this was no *Plea for the Incumbent, nor* for *any other, but for him againſt whom the Writ of Right of Advowſon* lies, which lies only againſt the Patron; for to the Writ it is no Plea, becauſe he does not give a better Writ againſt any Perſon certain; and to the Action it is no Plea, becauſe he who pleaded it does not intitle himſelf to the Patronage. Br. Plenarty, pl. 9. cites S. C.

9. The Incumbent ſhall plead the *ſame Plea as the Patron* pleads; quod nota. Br. Encumbent. 1. cites 33 H. 6. 13.

10. Quare Impedit by the Abbot, and counted of a *Voidance by Deprivation of one J.* The *Defendant ſaid that the Church was full of himſelf 6 Months before the Writ purchaſed, and the ſaid J. made Default in the ſame Writ*, Et non allocatur, *without anſwering to the Deprivation*; and after he ſhewed how he had ſued Repeal, and that he was in, and becauſe he did not plead certainly, therefore Non Allocatur. Br. Quare Impedit. pl. 113. cites 39. H. 6. 19.

11. In Quare Impedit *againſt two*, the *one pleaded as Patron* &c. and the *other pleaded the ſame Plea, and that the Patron preſented him to the Biſhop, who would not Admit* nor Inſtitute *him, which is the ſame Diſturbance* &c. and demanded Judgment Si Actio. And per Brian and Hawes it is a good Plea; For he cannot ſay, Ne diſturba pas; For in Fact this is a lawful Diſturbance, and *at Common Law Incumbent might plead againſt a Common Perſon, but not againſt the King*, quære inde; But this is now remedied by the Statute; But Keble contra, and that he cannot try the Right of the Patronage, and that *Diſſeiſor, Pernor, Incumbent* &c. *ſhall have Plea to excuſe them, but not to try the Right of the Benefice*; Quære, and ſee the Statute of Weſtminſter 2 cap. 5. of Plenarty. Br. Quare Impedit. pl. 157. cites 2 H. 7. 14. S.C. cited 7 Rep. 26. a. in the Caſe of Hall v. the Biſhop of Bath and Wells.

12. The King brought a Quare Impedit *againſt the Biſhop and his Collatee by his Lapſe*; The *Biſhop pleaded a Plea, which was held good*, and the *Collatee pleaded that he is Parſon Imparſonee of the Church aforeſaid Ex Preſentatione Præfati Epiſcopi in Forma, & ex Cauſa præallegata.* It was ſaid by Yaxley, That it ſhould be Ex Collatione, and not Ex Preſentatione; For that it is no more than Collation; And Coningsby ſaid, That the Plea of Ex Cauſa præallegata is not good by the Incumbent where he does *not join in Plea with the Biſhop*, but *ſhall ſhew the Matter as ſpecially as the Ordinary, becauſe he is a Stranger to the Plea of the Ordinary*; And the Juſtices ſaid plainly, That the Plea of the Incumbent is not good, Pro Cauſa antedicta. Br. Quare Impedit. pl. 91. cites 14 H. 7. 21. 15 H. 7. 6. & 7 & 8. S. P. For the *Plea of the Incumbent ought not to refer to the Plea of the Biſhop.* Br. Encumbent pl 6. cites 14 H. 7. 21.

13. Where a Clerk is in *without Preſentation* (as where the Dean and Chapter of Paul's preſented the Dean by the Name of B. and not by the Name of Dean, and this Preſentation was alſo without Writing) *or by Prayer to be admitted*, ſuch Incumbent is not aided by the Statute to plead in Bar; For there is no Preſentation in either of thoſe

Caſes; And the *Statute requires an Incumbent preſented.* Jenk. 199, 200. pl. 18. cites it as reſolved.

14. An Incumbent preſented and inducted may at this Day plead the Right of Patronage of his Preſentor, where the Patron confeſſed, or made Default, or pleaded faintly; But *cannot plead the Right of Patronage in another*, than in him who preſented him, Jenk. 200. pl. 18. ſays it was ſo reſolved; And that ſo are 16 E. 4. & 14 H. 8. to be underſtood.

15. When the *Incumbent pleads the Preſentment of a Stranger*, he muſt *ſhew that the Stranger had a Title*, and that he was ſeiſed of the Advowſon &c. or that he was ſeiſed of a Manor, to which &c. *But* where he pleads that he was *in for 6 Months of the Preſentment of the Plaintiff* himſelf, *or by Collation by Lapſe* by the Ordinary, there he need not not make any Title. Agreed per Cur. Noy 30. in the Caſe of Liſter v. Crameel.

Het. 17. S. C. adjudged — Hutt. 96. S. C. but S. P. does not appear.

16. In Quare Impedit the Defendant, the Incumbent, pleaded, *That he is Perſona Imperſonata* of the ſame Church *Ex Preſentatione Regis* &c. Exception was taken, becauſe he ſaid he was Perſona Imperſonata, and does *not ſay, Tempore Impetrationis Brevis*, ſed non allocatur; For it is inferred by the Writ brought againſt him, and if he be Parſon Imparſonee before the Writ brought againſt him, it is ſufficient, and divers Precedents were cited in the New Book of Entries, as Fol. 494. 405. 407. to that Purpoſe. Cro. C. 104. 105. pl. 6. Hill. 3 Car. C. B. Lady Chicheſley v. Thompſon and the Biſhop of Ely.

17. Adjudged that the Incumbent cannot plead to the Title of the Parſonage, that he *Eſt Perſona Imperſonata* of the Preſentation of the Patron, and the ſaying that *Fuit* is not ſufficient. Agreed. March. 159 Hill. 17 Car. Palmer v. Hudde.

(B. d. 13) *Double* Pleas.

Br. Double. pl. 134. cites S. C. accordingly.

1. THE *King brought Quare Impedit, and intitled himſelf to the Moiety of the Advowſon, becauſe the Father of the Defendant was ſeiſed and preſented* &c. *and died, and the Defendant, Heir to him, was outlawed in Treſpaſs, and the Church voided by the Death of the Incumbent of the Father* &c. The *Defendant ſaid that the Church is ſevered into 3 Parts, and ſhewed certain, Abſque hoc that the ſaid Incumbent was in by the Preſentment of the Father of the Defendant*, and the Plea awarded Double, viz. *the Church divided into 3 Parts*, which by the Juſtices, is a good Plea to the Writ, and the *Traverſe goes in Bar* of Action; quod nota. Br. Double. pl. 85. cites 22 Aſſ. 33.

Br. Double. pl. 134. cites S. C.

2. In Quare Impedit the Defendant pleaded, That *N. the Tenant granted the Land, and the Advowſon to him, who preſented twice, and ſhewed who, and ſo is he ſeiſed of the Advowſon* &c. and note the laſt Preſentment goes to the Writ, and the Deed of the Grant to the Action, and ſo Double; But becauſe he *concluded upon the one Matter* viz. the Seiſin &c. therefore it is not Double. Br. Double. pl. 56. cites 24 E. 3. 37.

3. In *Quare Impedit*, the *Plaintiff intitled himſelf as Appendant to his Land in Ward*, the *Defendant ſaid, That after the Death of the Anceſtor, he entered, and is yet ſeiſed, Abſque hoc, that the Plaintiff is poſſeſſed of the Land, and that the Anceſtor of the Infant held of one A. who held over of the Plaintiff, Abſque hoc, that he held immediately of the Plaintiff.* This is Double. Br. Double. pl. 135. cites 24 E. 3. 55.

In Quare Impedit, the Plaintiff made *Title by Gift in Tail, and alleged one Preſentment in the Donor, and another in the Donee*; And the beſt Opinion was, That *it is not Double*; For to ſay that Ne dona pas anſwers to all, and ſo of ſeveral Deſcents 33 H 6 And it was ſaid that one Preſentment may be alleged in the Anceſtor, and another in the Guardian by Chivalry by Nonage of the Heir, and good. Br. Quare Impedit. pl. 125. cites 4 E. 4. 3. — Br. Double pl. 97. cites S. C.

4. *Two Preſentments of Fee Simple are Double*; Contra, upon Eſtate Tail. Br. Quare Impedit. pl. 101. cites 24 E. 3. 77.

Two

Two Preſentments alleged, are Double ; per Brooke, but Brudnell Contra; For the *firſt ſhall be taken for Title*, and the *other for Conveyance only*. Br. Quare Impedit. pl. 149. cites 12 H. 8. 12. — S. P. Br. Double. pl. 112. cites 13 H. 8. 13.

5. In *Quare Impedit* the *Plaintiff counted that the Abbot and his Predeceſſors have uſed Time out of Mind at every Avoidance of the Churches of C. to preſent a Clerk to the Plaintiff and his Anceſtors, and he over to the Biſhop, and alleged Poſſeſſion that he had ſo preſented C. B. who was admitted and inſtituted ; and that C. B. after reſign'd, and the Abbot has preſented to the Ordinary now Immediately, and ſo diſturb'd him.* And Per Grene and Skip. *Preſcription* and the *Poſſeſſion alleged by the laſt Preſentment* is double ; and the ſame Law of 2 Preſentments, quod concordatur in the Caſe of Doingſells 33 H. 6. Br. Double, pl. 67. cites 24 E. 3. 78.

6. *Quare Impedit by the* * *King*, and he *counted upon 2 Preſentments*, and not double. *Contra in Caſe of a Common Perſon.* Note a Difference. Br. Double, pl. 22. cites 43 E. 3. 14.

* S P For he *may plead ſeveral Matters*, and the Party ſhall anſwer to all ; Quod nota. Br. Double, pl. 57. cites 14 H. 7. 26. — S.P. For he may allege as many Preſentations as he will ; quod nota ; Per Cur. quia Rex &c. per *Prerogativam*. Br. Double. pl. 82. cites 38 H. 6. 33.

7. In *Quare Impedit* the *Defendant pleaded to the Writ, That where the Plaintiff ſuppoſed the Voidance by the Death of R. it voided by the Death of W.* Judgment of the Writ, *and that the Brother of the Plaintiff, whoſe Heir he is, alien'd one Acre and the Advowſon appendant to the Brother of the Defendant, whoſe Heir he is, and his Brother preſented, and the Church voided* &c. and not double ; for he who pleads to the Writ in Quare Impedit ought to make Title ; for otherwiſe they ſhall not have Writ to the Biſhop ; quod nota, Br. Double, pl. 23. cites 43 E. 3. 25.

8. *Quare Impedit by the King by reaſon of the Avoidance during the Temporalties of the Biſhop being in his Hands* ; the *Defendant ſaid, that the Church did not void whilſt the Temporalties were in the King's Hands, and pleaded Ratification of the King of the Preſentation* ; this is double. Contra, if he relies upon Ratification of the King ; but after he waved the Plea, therefore quære. Br. Double, pl. 125. cites 7 H. 4. 37.

9. *Quare Impedit by the King againſt a Prior who had taken Gift of a Manor and Advowſon in Fee to hold in proper Uſe without Licence*, and the *Prior pleaded Letters Patents of the King made to him then Tenant of the Manor, and this by Conceſſimus & Confirmavimus*, and by Judgment this is ſingle enough ; for by reaſon it was pleaded to the Prior, then Tenant of the Land, it can't enure by way of Grant, but by way of Confirmation only. And Per Cheney and Weſtbury, becauſe 'tis *all by one Deed, which is entire*, it cannot be double. Br. Double, pl. 9. cites 6 H. 6. 22.

But Brooke ſays, See often elſewhere that a *Feoffment with Warranty* is double *if he does not rely upon the Warranty*. Br. Double, pl. 9. cites 6 H. 6. 22.

10. Quare Impedit brought by H. againſt B. and the Biſhop and the Incumbent, and *counted that he was ſeiſed of the Advowſon as in Groſs, and this as of Fee and of Right* &c *and preſented T. his Clerk who was admitted* &c. *in Time of Peace* &c. *and died* &c *and the Church now void ; and he preſented, and the Defendants diſturb'd him. B. ſaid, That W. was ſeiſed of the Manor of D. to which the Advowſon was appendant, and preſented his Clerk, and after W. infeoffed S.* &c. *who gave in Tail to the Baron and Feme, who were ſeiſed, and preſented, and convey'd the Manor to the Defendant as Heir in Tail ; and that he leaſed to Q. for ten Years, during which Term the Plaintiff preſented by Uſurpation, and now the Term is determined, and ſo now it belongs to him to him to preſent* ; And ſo by the Title and Uſurpation he confeſs'd, and avoided the Plea of the Plaintiff. The *Plaintiff ſaid, That during the Gift in Tail F. his Anceſtor, whoſe Heir* &c. *preſented one D.* his Clerk, *who was admitted* &c. *Abſque hoc that the Church was appendant to the ſaid Manor at the Time of the Gift, or ever after* ; And the Opinion of the

Br. Double, pl. 17. cites 33 H. 6 12, 13. accordingly. — For where a *Man intitled himſelf to a Villein Regardant or Common Appendant*, and *the other alleged Unity of Poſſeſſion in the Manor or Land to which* &c. and *travers'd*

the Regardancy or Appendancy, this is double; for *each is ſufficient Matter.* Per Priſot, Ibid.

the Court was, That this is *double*; for the Preſentment before the Gift made the Advowſon in Groſs againſt all; and the Traverſe of the Appendancy is another Matter, and therefore double. But by all the Juſtices, If the Plaintiff had *ſaid, That he himſelf preſented, as he declar'd, Abſque hoc that the Advowſon was appendant at the Time of the Gift*; this had been a good Plea. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12, 32. 34 H. 6. 11, 38. And 35 H. 6. 18.

And Per Priſot and 2 others, *of Advowſon in Groſs*, if the *Plaintiff counts of ſeveral Preſentments*, this is not double; for none is traverſable but the laſt Preſentment, and if the laſt be omitted, the Defendant may plead it in Abatement of the Count. Br. Double, pl. 16. cites 33 H. 6. 32.

11. In *Quare Impedit* the *Plaintiff counted that* one *J. S. was ſeiſed of the Manor of D. Ad quod Advocatio prædicta pertinet, and preſented one J. N. and alleged Gift en Tail to one M. his Anceſtor, and Deſcent, and that the Heir preſented upon another Avoidance; and* tho' he *alleg'd ſeveral Deſcents to himſelf as Heir*, yet upon long Argument it was agreed, That the Count was enough ſingle; for the *Gift* is the Effect, and only traverſable; and the *Deſcents are only Conveyances*, and therefore it is not double; And ſo Judgment, Quod reſpond' ultra; But Littleton pray'd Bill to be ſealed of the Exception, and had it. Br. Double, pl. 16. cites 33 H. 6. 32.

12. In *Quare Impedit* the *Defendant ſhewed Conveyance of Eſtate in Tail*, viz. *Seiſin in Fee in M. who made a Feoffment in Fee of the Manor and Advowſon appendant, and retook in Tail; and after diſcontinued the Manor, and after preſented to the Advowſon* &c. his Clerk, *and* then he *died, and ſo convey'd Remitter to the Iſſue in Tail*; and this Matter is not double, for he cannot convey the *Remitter* without expreſſing theſe Matters, which are the *Conveyance of it*, and can't aver the one without the other; and therefore it is not double. Per Vaviſor, Davers, and all; for the one cannot appear without the other. Br. Double, pl. 92. cites 5 H. 7. 36.

In *Quare Impedit* the *Plaintiff alleg'd, that N P. held of him*

13. In Quare Impedit the *one Preſentment in the Anceſtor of the Plaintiff*, and the *other in the Guardian* is not double. Br. Double, pl. 150. cites 4 E. 4. 3. and 7 E. 4. 20.

certain Land and an Advowſon, in Chivalry, and preſented &c. *who was received* &c. *and that a Guardian in Right of the Heir preſented* &c. *and that N. Tenant is now dead* &c. *the Heir in his Ward, and ſo it belongs to him to preſent* &c. and the Count awarded good notwithſtanding the 2 *Preſentments*, for it is *purſuant*; For the Preſentment of the Guardian only is no Title. Br. Double, pl. 56. cites 24 E. 3. 37. — Br. Double, pl. 134. cites S. C. accordingly. — Br. Quare Impedit, pl. 88. S. C.

14. *So*, of the *one in the Anceſtor*, and the *other in Tenant for Life*. Br. Double, pl. 150. cites 4 E. 4. 3. and 7 E. 4. 20.

15. *Quare Impedit by M.* and *counted that J. was ſeiſed of a Manor ad quod* &c. *and after convey'd the Manor to the King by Act of Parliament, and the Church voided, and the King granted the ſame Avoidance to the Plaintiff; and by the ſame Patent granted to him the Fee Simple of the Advowſon; and that the Plaintiff preſented after the Grant, and the Defendant diſturb'd him*; And the Defendant demurr'd for Doubleneſs, and yet the Plaintiff recover'd by Award; for the firſt Preſentment, and the Act of Parliament, and the Grant, and the Preſentation of the Plaintiff, is only *Conveyance*. Br. Double, pl. 162. cites 10 H. 7. 7, 8.

(B. d. 14) Pleas in *Bar*.

1. THE *King* brought Quare Impedit, and *counted of a Preſentation by J. S. who was ſeiſed in Fee* &c. *and of two others in himſelf by the Ward of the Heir of the ſaid J. S.* and that the Church is now void, and it belong'd to him to preſent, and the Defendant diſturb'd him. Caund ſaid,

ſaid, *The Clerk alleg'd by the King to be inſtituted* &c. *by the ſaid J. S. was not received nor inſtituted by the Preſentation of J. S.* And it ſeems to be a good Plea; for the 2 Preſentments of the King during the Cuſtody does not make Title to him nor to the Heir, without alleging Seiſin by Preſentment in the Anceſtor of the Heir, or in the Feoffor of the Anceſtor of the Heir, Et Adjournatur. Br. Quare Impedit, pl. 143. cites 42 E. 3. 4.

2. A Man may plead *Warranty and Aſſets deſcended* to bar the Plaintiff in Quare Impedit, or to have Scire facias after, if he has not Aſſets now. Per Finch, Quod Mombray Conceſſit. Br. Quare Impedit, pl. 31. cites 43 E. 3. 24. Br. Aſſets per Deſcent, pl. 32. cites 43 E. 3. 26. S. P.

3. Leſſee may *recover twice in two Quare Impedits againſt ſeveral Diſturbers, by ſeveral Writs of Quare Impedit.* Br. Parliament, pl. 8. cites 46 E. 3. 4.

4. *Releaſe of Actions Real* is a good Plea in Quare Impedit. Br. Quare Impedit, pl. 7. cites 9 H. 6. 56. But Per Rolfe, If one recovers in Quare Impedit, and dies, his Heir ſhall not have Execution, and therefore it is not an Action Real Ibid. *Releaſe of Actions Perſonal* is a good Bar in Quare Impedit. Per Porting. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

5. If the Plaintiff be *nonſuited* in Quare Impedit after Title made, this is a good Bar in another Quare Impedit, as Nonſuit in Writ of Right after Appearance. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

6. The *Ordinary cannot plead in Bar* in Quare Impedit *as Ordinary*; Per Bingham. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

7. There were *ſeveral Perſons and their Wives Plaintiffs* in a Quare Impedit, the Defendant pleaded the *Releaſe of one of the Husbands pending the Writ*; Adjudged, that this goes only in Bar of him who made it and his Feme, and that the Writ ſhall ſtand good for the reſt. 5 Rep. 97. Mich. 39 & 40 Eliz. C. B. The Counteſs of Northumberland's Caſe. Mo. 455. pl. 625. S. C. — Cro. E. 518. pl. 44. Mich. 38 & 39 Eliz Fitton and the Counteſs of Northumberland & al v. Hall & al. S. C.

(B. d. 15) Pleadings. *Traverſe*; *Neceſſary*, in what Caſes. See Traverſe.

1. IN Quare Impedit, if the Plaintiff makes *Title as appendant to ſuch Land*, the Defendant *ſhall not ſay that it is in Groſs or Appendant to other Land, without ſaying How, and traverſing the Plaint.* Br. Quare Impedit, pl. 7. cites 9 H. 6. 56.

2. The *Plaintiff* in Quare Impedit *ſaid, That he was ſeiſed of two Acres in D. with the Advowſon appendant, and preſented* &c. and now the Church is void again, and he preſented, and the Defendant diſturbed him; the *Defendant ſaid, That after the firſt Preſentation of the Plaintiff he himſelf was ſeiſed of the Advowſon as of Groſs, and the Church voided, and he preſented, and his Clerk in*, and now it is void again, and he preſented, Prout ei licuit &c. and well, without traverſing the Appendancy. Br. Conteſs and avoid, pl. 60. cites 15 H. 6. and Fitzh. Quare Impedit 77. S. C. cited accordingly. Vaugh. 16. in Caſe of Sir John Tufton v. Sir Richard Temple, That the Plea was allowed a good Plea without anſwering to the Appendancy alleged by the Plaintiff, which is in Effect avoided by the Defendant's Preſentation after, and that in this Caſe the Plaintiff was without Remedy, (unleſs he could traverſe the Preſentation alleged by the Defendant) otherwiſe than by his Writ of Right of Advowſon.

Br. Quare Impedit, pl. 17. cites S. C. and P. and ſays, That then the Defendant would have alleged that the Advowſon is

3. In Quare Impedit, the Plaintiff *counted, That the Advowſon is in Groſs, and intitled himſelf* &c. The *Defendant ſaid, That the Moiety is to him Appendant to his Manor of D. and intitled himſelf to every 2d. Preſentment*, and the Plaintiff to every ſecond Preſentment *as in Groſs, and that this is his Turn*; this is no Plea without *Traverſe that the Advowſon is not in Groſs*, Prout &c. for otherwiſe it is only Argument; for he has not Confeſſed and avoided, nor Traverſed. Br. Traverſe per &c. pl. 31. cites 35 H. 6. 32. 33.

appendant to every ſecond Avoidance, and in Groſs to every other Avoidance to the Plaintiff, & non allocatur; For his own Plea proves that he has but the one Moiety of the Advowſon appendant, and that the Plaintiff has the other Moiety in Groſs; Quod Nota, Per tot. Cur.

But againſt the King he can *not* traverſe the Title of the King without intitling himſelf; Per Noting. Ch Baron, which Brian denied; but erroneouſly, as it ſeems. Ibid.

4. Between common Perſons the *Defendant may traverſe the Title of the Plaintiff without intitling of himſelf*, but then *he ſhall not have Writ to the Biſhop*. Br. Quare Impedit, pl. 138. cites 21 E. 4. 1. 3. Per Noting. Ch. Baron.

*The Word in Brook is (Plaintiff) but ſeems miſ-printed in all the Editions, and the Word in the Year-Book is (Defendant.)

5. In Quare Impedit the *Plaintiff ſaid, That he preſented J. S. who was admitted, inſtituted* &c. and after *J. S. reſigned*, and *he preſented, and the* * *Defendant diſturbed* &c. The *Defendant ſaid, That before the Preſentment of the Plaintiff he himſelf preſented the ſaid J. S. who was admitted* &c. *and after the Plaintiff preſented this ſame J. S.* the ſaid *J. S. then being Incumbent there*, and ſo the Preſentment of the Plaintiff void, and no Plea; Per Brian and Vaviſor; in as much as the Defendant *did not traverſe that the Church was not void at the time of the Preſentation of the ſaid Plaintiff*; but Townſend e contra, in as much as the Lay Gents cannot take Conuſance of the Voidance; but at laſt Keble took the Traverſe. Br. Quare Impedit, pl. 164. cites 11 H. 7. 17.

6. Where the *Plaintiff makes Title by Appendancy*, and the *Defendant alleges two Preſentments after*, there he *need not traverſe the Appendancy*; For Uſurpation is ſufficient Title in Quare Impedit. Br. Quare Impedit, pl. 149. cites 12 H. 8. 12.

Br. Traverſe per &c. pl. 2. cites S. C.

7. In Quare Impedit the Plaintiff *counted that he was ſeiſed in Fee as of Groſs, and preſented A.* &c. and after he died, and he preſented now and is diſturbed &c. The *Defendant ſaid, That before this he was ſeiſed in Fee as of Groſs, and preſented B. who was admitted* &c. *and after he granted the next Preſentation to the Plaintiff who preſented A. and he died, and ſo now it belonged to the Defendant to preſent*, and did not traverſe the Seiſin in Fee of the Plaintiff; and well per Fitzherbert clearly, for he has confeſſed and avoided it; quod mirum; Br. Confeſs and avoid, pl. 1. cites 26 H. 8. 4.

(B. d. 16) Pleadings. Traverſe. *Good*; In what Caſes.

Br. Quare Impedit, pl. 83. cites 22 H. 6. 25. S.C. per tot. Cur.

1. IN Quare Impedit, the *laſt Preſentment* is traverſable, and *not the Preſcription alleged*; Quod Nota. Br. Traverſe per &c. pl. 99. cites 22 H. 6. 26.

But between common Perſons the Preſentment ſhall be tra-

2. *In Quare Impedit, where the King is intitled to the Manor and Advowſon Appendant by Ward of the Heir of his Tenant, and alleges Preſentment in the Anceſtor of the Plaintiff, and that the Ward fell to him, and the Defendant makes Title to him as in Groſs, and traverſes the Preſentment*, this is not

not good; For he *shall traverse the Appendancy*; because this is the Title of the King; Quod Nota, by all the Justices after great Argument. Br. Traverse per &c. pl. 257. cites 20 E. 4. 13. & 14.

versed, and not the Appendancy; for the Presentment

makes Possession; Per Collow. Br. Traverse per &c. pl. 257. cites 20 E. 4. 13. 14.——*But* yet *where both the Parties claim by one and the same Person*, and the one claims in Gross, and the other as appendant, there the Appendancy shall be traversed; Per Collow; to which Littleton and Bryan Justices agreed. Br. Ibid ——Br. Traverse de Office pl. 40. cites 20 E. 4. 14. and 21 E. 4. 1. S. C.

3. In Quare Impedit, the *Plaintiff made Title that his Mother was seised and presented, and she died, and the Church voided, and the Bishop presented*; and *the Bishop said, that the Church voided in the Time of the Mother of the Plaintiff, by which he presented by Lapse*, absque hoc *that the Church voided after* the Death of the Mother of the Plaintiff, and the Court held the Absque hoc good. Br. Traverse, per &c. pl. 175. cites 1 H. 7. 9.

Br. Negativa, pl 37. cites S. C.

4. In Quare Impedit, the *Plaintiff said, that he was seised of the Advowson* &c. *and presented, and now the Church is void* &c. The *Defendant said, That it is appendant to the Manor of D. whereof his Ancestor was seised and presented, and conveyed the Manor to himself by Absque hoc that the Advowson is in Gross*; and no Plea, by reason that he did *not deny the Presentment of the Plaintiff*, which is material if the Advowson be in Gross or not, and therefore it was adjudged, that he should traverse the Presentment, and not the being in Gross. Br. Traverse per &c. pl. 384. cites 10 H. 7. 27.

S. C. cited by Vaughan Ch. J. Vaugh. 9. in Case of **Tufton** v. **Temple**. Hill. 17 & 18 Car. 2. ——*But* it was agreed, that *if the Plaintiff intitles himself by Presentation as Appendancy, and the Demandant pleads another Plea absque hoc that the Advowson was appendant*, this is a good Traverse. Br. Traverse per &c. pl. 384 cites 10 H. 7. 27.—— *So if he traverses the Presentment*; *For every of them destroys the Declaration of the Plaintiff.* Br. Ibid.

Quare Impedit by Lord Buckhurst against the Bishop of Chichester, and T. Bickley, for the Vicarage of Westfield, and *counts, that the Advowson of the Vicarage appertains to the Rectory of Westfield, whereof he was seised in Fee &c and presented M. Sackvil, who was admitted &c. and inducted, and* that the Vicarage *was of the yearly Value of* 8 *l. and void by his Acceptance of another Benefice, and the Plaintiff presented*, and the Defendants disturbed him &c. The *Bishop pleaded, that* Richard *his Predecessor was seised* of the Advowson of the said Vicarage *in Fee, as of an Advowson in Gross, and collated* to it (being void) one Maurice Berkley, who was inducted; that the said Bishop died; that the Defendant was created Bishop, and so became seised of the Advowson, and being so seised the Church became void, the said M. S. having taken another Benefice with Cure, and he collated the other Defendant T. Bickley, and *traversed that the Vicarage appertained to the said Rectory*; and the said Bickley pleaded the same Plea. And upon a special Demurrer to these Pleas, for that the Appendancy was not traversable, the Court agreed, That (though in many Cases the Books are, that the Appendancy is traversable, yet) *as this Case is* here, *the Appendancy is not traversable*; for the *material Parts* of the Declaration *are the Seisin in Fee*, the *Presentation*, the *Admission and Institution* of his Clerk, *and the Avoidance*, so that it is not material, whether the Advowson was Appendant or in Gross; and therefore when the Appendancy shall be traversed, it ought, upon the Matter shewn, to be material, or else the Traverse is ill. As if the Plaintiff counts of a Seisin of an Advowson in Gross, and that he presented, and the Church became void &c. if the Defendant says, That he was seised of the Manor to which the Advowson belongs which became void, and he presented, absque hoc, that the Advowson was in Gross; the Court held this to be no Plea, and cited 10 H. 7. 27. And it was said, That notwithstanding the Book there, the Law will be the same, where the Plaintiff makes Title as to an Advowson appendant, and divers Books were cited; the Court adjudged the Plea ill 35 H. 6. 32. and there were also cited 27 H. 9. 33 H. 6. 12. 32. 34. Nota those and other Books. And. 269. pl. 276. Pasch. 33 Eliz. Lord Buckhurst v. Bishop of Chichester and Bickley.——S. C. cited Vaugh. 10 and Ld. Vaughan says, pag. 11. that the Case of 10 H. 7. was principally relied on as warranting the Judgment, which he says it fully does, it being adjudged for the same Reason there, that the Seisin in Fee of the Advowson in Gross was not traversable, but the Presentation was, as it was in this Case adjudged that the Appendancy was not traversable but the Presentation. And Ld. Vaughan said he observed, That in **Ld. Buckhurst's Case** it is admitted, that the Plaintiff in the Case of 10 *H.* 7. *did count that he was seised of the Advowson in Gross and presented*, whereas he said, he noted that the original Case in the Book is, that *he counted only upon his Presentation*, and says, that probably it was so for the Reasons given by Lord Hobart in **Digby's Case**, that *a bare Presentment is only militant when so alleged by the Plaintiff, and may be in such a Case as may prove the Defendant to have a Right of presenting at the present Avoidance, if no Right be alleged by the Plaintiff why he should present*; whence he collects, that in both these Cases of 10 H. 7. and this of the Lord Buckhurst, though there were a manifest Inconsistency in the first Case between the Plaintiff's Count, that he was seised of the Advowson in Gross, and presented, and the Defendant's Title, that he was seised of a Manor to which the Advowson was appendant (for it was impossible it should be appendant for the Defendant, and in Gross for the Plaintiff) and in the **Ld. Buckhurst's Case**, who counted that he was seised of the Rectory of Westfield, to which the Advowson of the Vicarage belonged, and the Defendant made Title, that he was seised of the Advowson in Gross, which Titles were

were directly inconſiſtent, yet neither the Seiſin in Groſs in the firſt Caſe, nor the Appendancy in the laſt Caſe were traverſable, but the Preſentation of the Plaintiffs in both, which made their immediate Titles to preſent at the next Avoidance, whether there were a Seiſin in Groſs, or an Appendancy or not when they firſt preſented. As in theſe two Caſes the true Reaſon of the Law appears, why the Seiſin in Groſs of the Advowſon, nor the Appendancy of the Advowſon alleged by the Plaintiffs were not traverſable, but only the Preſentation, by theſe Caſes the Lord Hobart's Scruple in Digby's Caſe is ſatisfied, where he thinks, that if a Man has gained a Title by Uſurpation, at the next Avoidance he muſt not declare, that he was ſeiſed in Fee formerly of the Advowſon, and preſented; but muſt declare ſpecially of the true Patron's former Preſentation, and then the Church becoming void, that himſelf preſented, leaſt otherwiſe by declaring that he was ſeiſed of the Advowſon in Fee, the Defendant ſhould trice him by traverſing his Seiſin, which was falſe, when in Truth he had a Right to preſent by Uſurpation; For by theſe Caſes it is clear, that the Seiſin in Groſs nor Appendancy are traverſable, though alleged by the Plaintiff when he has gained a Title by Uſurpation, but the Preſentation ought to be traverſed.—But if the Plaintiff declare the Advowſon to be appendant to a Manor, and withal ſets forth in his Declaration the Letters of Preſentation to the Church as appendant, there the Defendant may traverſe either the Appendancy or the Preſentation; for though the Advowſon were appendant, yet if the Plaintiff preſented not, he had no Title. Whence he infers, that if the Plaintiff had counted of a Seiſin of the Manor, to which the Advowſon was appendant, without ſhewing the Preſentment to be to the Church by Virtue of the Appendancy, the Traverſe of the Appendancy had not been good; but it muſt have been of the Preſentation, which might have been by Uſurpation, notwithſtanding the alleging barely of the Appendancy, as is reſolved before in the Point in the Lord Buckhurſt's Caſe in Anderſon, and in the principal Caſe of 10 H. 7. But when the Count is of the Appendancy of the Advowſon, and alſo of the Preſentation to it as appendant, there could be no Uſurpation according to the Reſolutions in Sir Henry Caudie's Caſe in the Lord Hobart and in Crun's Caſe in the 6th Report of the Lord Cook; and he ſaid, that the not obſerving of this Difference made the Reporter at the End of the Lord Buckhurſt's Caſe deny this latter Part of the Caſe in 10 H. 7. becauſe it was clearly againſt the Reaſon of the principal Caſe in 10 H. 7. and againſt the Reſolution of the Lord Buckhurſt's Caſe, if the Words of ſhewing the Preſentment to have been as appendant had been omitted in the Caſe; but thoſe Words make the latter Caſe in 10 H. 7. exactly to agree with the Judgments both in Sir Henry Caudie's Caſe in Hob. and Green's Caſe in the 6th. Rep. Per Vaughan Ch. J. Vaugh. 15. in Caſe of Tufton v. Temple.

Br Quare Impedit, pl. 4 cites S. C. —— S. C cited by Vaughan Ch. J. Vaugh. 12. Hill. 17 & 18 Car. 2.

5. Where the *Title of the Plaintiff is to the Manor and Advowſon Appendant*, and that the *Defendant diſſeiſed him of the Manor*, and the *Defendant ſays, That it is Appendant to four Acres, whereof J. N. was ſeiſed and infeoffed him*, there the *Diſſeiſin* of the Manor *is not traverſable, but if* it was *appendant to the Manor or to the four Acres*; Quod Nota. Br. Traverſe per &c. pl. 8. cites 27 H. 8. 29.

and ſays, This Traverſe was adjudged not good; For the Diſſeiſin or Non-diſſeiſin of the Manor was not material to intitle the Plaintiff to the Qua. Imp. but all his Title was by the Appendancy of the Advowſon to the Manor, and therefore the Traverſe ought to have been, and was ſo reſolved, to the Appendancy which deſtroyed the Plaintiff's intire Title to preſent, and was alſo inconſiſtent with the Defendant's Appendancy of the Advowſon to his 4 Acres.

S. C. Litt. Rep. 14. argued but no Judgment -- Vaugh. 16. in the Caſe of Sir John Tufton v. Sir Richard Temple, cites S. C. and ſays, That becauſe the Defendant doth admit the Advowſon to be in Groſs, or Appendant, in the Plaintiff, and that neither of them is inconſiſtent with the Title made

6. In a Quare Impedit for the Church of Chelmsford the Plaintiff *ſet forth, That Sir T. M. was ſeiſed and preſented P. and then leaſed the Manor, to which the Advowſon was Appendant, to the Plaintiff, and that the Church became void by the Reſignation of P.* &c. whereupon it belonged to the Plaintiff to preſent. The *Defendant confeſſed the Title of Sir T. M. and the Leaſe* made to the Plaintiff, *and pleaded over a Simoniacal Contract, upon which P was preſented, which being void* by the Statute of 31 Eliz. *the King preſented the Defendant, who was* admitted, inſtituted, and *inducted* theron, *Abſque Hoc, that the Church became void by the Reſignation of* P. And upon Demurrer it was objected, That this Traverſe is ill; For the Preſentation is the principal Thing, which being confeſſed and avoided, cannot be traverſed; But all the Court conceived the Plea good; For the Plea makes the Traverſe argumentative only, that he might not reſign; And being alleged that the Church is void Per Mortem vel Reſignationem, or otherwiſe it ought to be confeſſed or traverſed; For that is the Cauſe of his Preſentment, and the *Iſſue ought to have been Si vacavit per Mortem, vel Deprivationem, vel Reſignationem*; For *the Preſentation, Admiſſion, and Inſtitution are conducing only to the Reſignation*, and the Reſignation or Avoidance is the chiefeſt Matter. Cro. J. 61. pl. 6. Mich. 2 Jac. C. B. Fenner v. Nicholſon and Pasfield.

by the Defendant, he ſhall not traverſe the Seiſin in Groſs, nor the Appendency; but becauſe

cauſe ſomewhat elſe is neceſſary to give the Plaintiff Right to preſent, viz the Vacancy of the Church, either by Death or Reſignation, or Deprivation, which the Plaintiff muſt allege, and which are inconſiſtent with the Defendant's Title, who claims not by Vacancy by Death, Reſignation, or Deprivation, but by the Simony, therefore he ſhall traverſe the Vacancy alleged either by Death, Reſignation, or Deprivation, as the Caſe falls out, without one of which the Plaintiff makes no Title, and if the preſent Vacancy be by either of them, the Defendant hath no Title.

7. Sir Henry Gawdy Knt. brought a Quare Impedit againſt the Archbiſhop of C. Sir W. B. and H. R. Clerk, and *counted that Sir R. S. was ſeiſed of the Manor of Popenho in Norfolk, to which* the Advowſon was Appendant, *and preſented M.* his Clerk, *who was inſtituted and inducted*, and that Sir R. ſo ſeiſed, *bargained and ſold the Manor to* one *Barow, who being ſeiſed, the Church became void by the Death of M. and ſo continued for* 18 *Months, whereby the Queen*, in Default of the Patron, Ordinary, and Metropolitan, *preſented* by Lapſe *one Snell, and* by mean Conveyances *derives the Manor*, to which the Advowſon is Appendant *to himſelf, and that by Snell's Death it belongs to him to preſent*, and is diſturbed by the Defendants; The Archbiſhop claims nothing but as Ordinary Sede vacante of the Biſhop of Norwich. Sir W. B. pleaded Ne Diſturba pas and H. the preſent *Incumbent pleaded, That he was Parſon by the King's Preſentation; and that long before Sir R. any thing had in the Manor, Q. Elizabeth was ſeiſed* of the Advowſon *in Groſs in Right of the Crown, and preſented Snell*, and that ſhe dying ſeiſed, *the Advowſon deſcended to King James, and he*, being ſeiſed and the Church becoming void by Snell's Death, *preſented the Defendant H. R. who was inſtituted and inducted, Abſque hoc, that the Advowſon was Appendant* to the Manor of Popenho, and thereupon Iſſue was joined. Hob. 301. pl. 380. Hill. 17 Jac. Gawdy v the Archbiſhop of Canterbury & al.

S C. cited in the Caſe of Sir John Tufton v. Sir Richard Temple Vaugh. 13. and there ſays, That in this Caſe the Traverſe of the Appendency by the Defendant was clearly good, and ſo admitted; for the Plaintiff Gawdy had no more, nor other Title to preſent, than by the Appendancy of the Advowſon to the Manor, Defendant's

and the Incumbent's Death; and the Appendancy to the Manor was inconſiſtent with the Title by the Advowſon's being in Groſs. And this proves that the Traverſe is *well taken to the Appendancy* of the Advowſon *when it is all the Plaintiff's Title to preſent, and is inconſiſtent with the Defendant's. But in Gawdy's Caſe, the Jury found Specially, That Sir R S. was ſeiſed of the Manor with the Advowſon Appendant, and preſented, and that the Incumbent dying the ſecond of February*, 1588. *the Queen, the 15th of Feb. the ſame Year, preſented Snell to the Church then void Per Mortem Naturalem ultimi Incumbentis ibidem vacantem, et ad noſtram Præſentationem Jure Prærogativæ Coronæ noſtræ Angliæ. ſpectantem, and her Clerk inſtituted by Letters of Inſtitution Running Per Dominam Reginam Veram & Indubitatam, ut dicitur, Patronam.* And *after the Death of Snell, King James preſented H. Rone* in theſe Words, *Ad noſtram Præſentationem, ſive ex pleno Jure, ſive per Lapſum Temporis, ſive alio quocunque Modo ſpectantem, and referred to the Court, whether the Advowſon were appendant to the Manor or not*; It was adjudged, 1. That the Advowſon remained Appendant, notwithſtanding the Queen's Preſentation. 2dly, That her Preſentation could not be by Lapſe; for her Preſentation, Inſtitution, and Induction were in the ſame Month of February, wherein the Avoidance was. 3dly, If the Queen had preſented by Lapſe, it had made no Severance of the Advowſon. 4thly, That the Queen's Preſentation made no Uſurpation, becauſe ſhe preſented, as ſuppoſing ſhe had a Title in the Right of her Crown, as appeared by the Form of her Preſentation, which is very remarkable, and therefore her Preſentation was merely void; For it ſhall not be intended, the Queen took away another's Right againſt her own Will and declared Intention. 5thly, For the ſame Reaſon King James's Preſentation of Rone, who by the Form of his Preſentation ſuppoſed he had a good Title, when he had none, was alſo void; And this agrees with the Reſolution in Green's Caſe the 6th Rep. that the Queen's Preſentation, as made by Lapſe, when ſhe had no ſuch Title to preſent by Lapſe, but another Title either in Right of her Crown, or by Simony, or ſome other Way, was void, becauſe ſhe was miſtaken in her Preſentation; ſo if ſhe preſents by reaſon of ſome ſuppoſed Title in her Letters of Preſentation, when indeed ſhe has no Title at all, the Preſentation is merely void, and though ſuch Preſentation makes a Plenarty, ſo as to avoid Lapſe, yet the right Patron is out of Poſſeſſion, but may preſent 7 Years after, and if his Clerk be inducted, the former Preſentee is immediately ouſted. Vaug. 13. cites Hob 301. Sir Henry Gawdy's Caſe.

8. In a Quare Impedit &c. the Plaintiff *counted of a Seiſin in Feee, and that he preſented* &c. the *Defendant pleaded, That he is Parſon Imparſonee* &c. *and that long before the Plaintiff any thing had* in the Advowſon, King *H.* 8. *was ſeiſed in Fee, and preſented, and died ſeiſed*; *And* that it *deſcended to Ed.* 6. and *ſo to Queen* Mary and *Elizabeth, who* being ſeiſed Jure Coronæ, *preſented one B and after his Death, the now Plaintiff preſented by Uſurpation the Defendant; That Queen Elizabeth died ſeiſed, and it deſcended to King James who granted to one under whom the Defendant made Title, and the Defendant was inſtituted and inducted.* The *Plaintiff* replied,

S. C. Jo. 11, 12. Mich. 18 Jac. C. B. adjudged accordingly; For the Grant alleged to be made by E 6. proves Prima Facie that he did not

die ſeiſed, and therefore it ought to be traverſed. 2dly, the Court held the Preſentation of the Queen to be well confeſſed, by ſaying, that it was by Lapſe; For it is not alleged certainly, that the Queen preſented as Vera Patrona, but

replied, and *took Proteſtation of the Seiſin of Q. Mary, Q. Elizabeth, and the Now King, and for Plea confeſſed the Seiſin of the Plaintiff* &c. and the Seiſin *of H. 8. and Ed. 6. and then derived a Title to himſelf under a Grant* made of the Advowſon *by Ed. 6.* And *that Queen Elizabeth preſented, but* that *the ſame was by Lapſe*; And that by the Death of her Preſentee, it now belongs to the Plaintiff to preſent, *Abſque hoc, that King Ed. 6. died ſeiſed* &c. And upon Demurrer it was objected, That he does not traverſe the Seiſin of Queen Mary and Elizabeth, and their dying ſeiſed, nor the Preſentments alleged by reaſon of the Seiſin in Fee, but only ſays, That they were by Lapſe; But as to this Point, the Court held the Replication well enough; For the *Dying ſeiſed was the principal Matter* to be traverſed, *and the other* were *but the Conſequents* thereof, and the Plaintiff may traverſe any Part of the Defendant's Plea; And ſo a former Judgment was affirmed in Error; But becauſe the Plaintiff in the firſt Action died pending the Plea, the Entry of the Judgment was ſtaid. Cro. J. 650. Mich. 20 Jac. B. R. Savil v. Thornton.

only that ſhe is Seiſed in Jure Coronæ, and ſo ſeiſed, preſented generally, without ſaying either the one Way or the other, and then the ſaying it was * by Lapſe was a good Avoidance——— [* The Original has the Word (Not) but it ſeems miſprinted.] ——— S. C. Winch 13, 14. but it ſeems very imperfectly printed; For after the Grant pleaded to be made by E. 6. and that the Preſentment made by Queen Elizabeth was by reaſon of Lapſe, it ſays, "That Queen Elizabeth preſented L. only Abſque "hoc, that E. 6. granted &c." So that the Words (preſented L. only) muſt be printed probably according to the ſhort Writing in the Manuſcript, whence it was taken, inſtead of (preſented by Lapſe only.)——— S. C. Palm. 306. and there 111. it was reſolved that the Traverſe of the Dying ſeiſed of E. 6. was good, becauſe it was material to the Title of the Defendant, and if this be true, it will deſtroy the Plaintiff's Title, and for that Reaſon he ought to traverſe it; But if the Defendant had commenced his Title by the Preſentment of the Queen, in ſuch Caſe the Preſentment ſhould be traverſed; And they agreed, That when the Queen preſented by Lapſe, this is as Supreme Patron, and not as Supreme Ordinary; And therefore though the Allegation of the Defendant in Bar is, that the Queen preſented, yet this is well confeſſed, and avoided by the Plaintiff in the Replication, when he ſays that thoſe Preſentments were by Lapſe; For Preſentments by Lapſe maintain the Poſſeſſion of the true Patron, and do not gain any Patronage from him. ——— 2 Roll. Rep. 239. S. C. but not S. P.

9. In a Quare Impedit, the Plaintiff entitled himſelf by Grant of the next Avoidance, and *that T. C. was preſented, admitted, inſtituted, and inducted*; And that the ſaid Church became void by *Acceptance of a ſecond Benefice* above Value; The * Archbiſhop pleaded a Plea, to which there was a Demurrer; and S. the *Incumbent* pleaded a Plea, and *traverſed that T. C. was admitted and inſtituted* therein; and upon this they were at Iſſue, and a Writ awarded to the Archbiſhop for that Trial; But afterwards the Plea of S. being adjudged ill, a Repleader was awarded, becauſe *the Induction, being alleged, ought alſo to have been traverſed*; whereupon S. amended his Plea, and traverſed the Admiſſion, Inſtitution, and Induction; Iſſue was joined thereupon, and found for the Plaintiff; Afterwards Error was brought, and among other Things it was aſſigned, that the Repleader was not well awarded; For that the Iſſue, which was joined before the Writ awarded to the Archbiſhop, was well enough, and needed not any Repleader; But all the Court Contra, and that the Repleader was well awarded; For the Induction being alleged, as well as the Inſtitution, there ought to be a Traverſe to it, which alters the Courſe of the Trial according to the Caſe in 22 H. 9. 27. & 2 H. 4. 17. ſo as it ſhall be tried Per Pais. Cro. C. 379, 380. pl. 6. Mich. 10. Car. B. R. Stevens v. Facone.

* Quære if this ſhould not be (Biſhop) without (Arch.)

10. The King *counts that Queen Elizabeth was ſeiſed of* the Advowſon of the Church of Northfield *in Groſs in Fee in Jure Coronæ, and preſented one W.* &c. *and ſo derives a Title to himſelf*, and that the Church became void by the Death of the ſaid W. and ſo it belonged to him to preſent, but the Defendants diſturbed him. T. J. *one of the Defendants, pleaded, that before the Preſentation of the Queen, his Anceſtor* R. J. *was ſeiſed in Fee of the Manor of N. to which* the Advowſon of the Church was and is appendant, *and that it became void by the Death of the then laſt Incumbent,*

2 Jo. 8. S.C. by the Name of the King v. Jervis. adjudged for the Defendant. —— Mod. 276. Trin. 29 Car. 5. The Arguments of

bent, and ſo continued for 2 Years; whereupon the Queen preſented the ſaid W. by Lapſe, and then *derives a Title to himſelf* of the ſaid Manor and Advowſon; And that his Anceſtor, whoſe Heir he is, upon the Death of W. granted the next Turn to W. R. who preſented J. S. who was inſtituted and inducted, and died, and that he preſented the other Defendant Hunkley, and *traverſed the Queen's Seiſin* of the Advowſon *in Groſs*; the Attorney-General *replied*, and maintains the Seiſin of the Queen, and ſo of the preſent King, *and that the ſaid W. R. preſented by Uſurpation, and traverſed, that the Advowſon* of the Church was, or *is, appertaining to the Manor*, and upon a Demurrer to this Replication, the Defendant, the Patron T. J. had Judgment. Vaughan Ch. J. obſerved the Faults on both Sides in this Pleading; And firſt the Fault in the Plea where the *Defendant* had not well traverſed the King's Title, it being only in Part; For he traverſed only the Seiſin, when properly *he ſhould have traverſed the Seiſin and Preſentation of the Queen by reaſon of her Seiſin*, (viz.) *Abſque hoc, that the Queen was ſeiſed of the Advowſon in Groſs and preſented.* The Seiſin of an Advowſon, makes not a Title alone, nor is it traverſable; But there being no Demurrer, nor Iſſue thereupon, he would not ſay any more to it. He ſaid that the Defendant's Traverſe was not neceſſary, becauſe he had confeſſed and avoided the Queen's Preſentation, by ſaying it was by Lapſe; And if he had reſted there, the Attorney General ought to have maintained his Count, and traverſed the Queen's Preſentation by Lapſe, whereas he deſerts making out the King's Title, and falls upon the Defendant's Title, viz.) that the Advowſon was not Appendant; And he offers a *Double Iſſue* viz. *that the Preſentation of W. R. was by Uſurpation, and that the Advowſon was not Appendant* to the Manor. Judgment for the Defendant. Vaugh. 53 to 56. Trin. 21. Car. 2. in C. B. The King v. Biſhop of Worceſter, Jervis and Hunckley.

Wild, Archer, and Tyrrel J.

11. Quare Impedit for the Church of Burton Daſſet, in the County of Warwick. The *Manor* of B. D. *was divided*, and the *Defendant had 2 Parts* of it, *and the Plaintiff the 3d*; and the *Plaintiff ſet forth, That the Right of preſenting every 3d Turn was appendant to his 3d Part, and that it belonged to the Defendant to preſent twice, by reaſon of his two Parts*; And ſo ſets forth, that the Defendant had preſented twice, and ſo it belonged to him to preſent Now; The *Defendant ſays, that the whole* Advowſon *did belong to him, Sans ceo, that one Turn was appendant to the Plaintiff's third Part*; The Plaintiff demurred generally. It was among other Things *objected*, That the Defendant *ought to have traverſed the Preſentment, and not the Appendancy*; For tho' in ſome Caſes it may be done, yet that is when the Appendancy is material, and when the Defendant muſt ſet forth a Title, and cited 10 H. 7. 27. 20 E. 4. 13. 21 E. 4. 1, 2. But to this it was anſwered for the Deſendant, that the Traverſe is well taken; and that if the Advowſon be not appendant the Plaintiff hath no Title, for he hath alleged the laſt Preſentation in us; And if he had gained a Title by former Preſentations, yet when we preſented again, we are remitted, and cited 1 Inſt. 363. Nat. Brev. 35. and he differenced this Caſe, from that in 1 And. 269. becauſe there was a ſpecial Demurrer, and ſo might take Advantage of Matter of Form, and there the Defendant made a Title to an Advowſon in Groſs, and then the Preſentment makes the Title; But where it is appendant, the Appendancy makes the Title, and therefore muſt be traverſed; And it hath frequently been ſo. Freem. Rep. 34. pl 43. Trin. 1672. **Tufton v. Temple** cites D. 260. 1 Cro. 61. Hob. 321. 10. Co. Chancellor of Oxford's Caſe. But no Judgment appears to be given.

S. C. Vaugh. 1. to 17. And there Vaughan ſays, It ſeems clear, That in all Caſes of Quare Impedits, the Defendant may ſafely traverſe the Preſentation alleged in the Plaintiff's Count, if the Matter of Fact will allow him ſo to do; For the Plaintiff has no Title without alleging a Preſentation in himſelf, his Anceſtor, or thoſe from whom he claims the Advowſon;

But the Defendant muſt not traverſe (that is deny) the Preſentation alleged, when there was a Preſentation; For then the Iſſue muſt be found againſt him; Therefore Lord W. under whom the Plaintiff claims, having preſented, be it by what Right ſoever, there was no traverſing his Preſentation; But whatever Right the Lord W. preſented by, the Plaintiff has no Right to preſent, unleſs the Lord W's Preſentation, was by the Appendency to the 3d Part of the Manor; For he deriving no Title to the Advowſon as in Groſs, nor any other Way, but as belonging to the 3d Part of the Manor, which he derives from the Ld W. therefore nothing is traverſable by the Defendant but the Appendency, which if found againſt the Plaintiff he has no Colour of Title.

(B d. 17) Pleadings. *Profert or Monſtrans* of Deeds &c. *Neceſſary in what Caſes.*

1. IN Quare Impedit, if the *Defendant makes a Title by Grant by Deed*, and does not ſhew it, by which the *Plaintiff demurs* for the not ſhewing, which is adjudged againſt the Defendant, and that he ought to have ſhewn the Deed, this is *peremptory*, and the Defendant ſhall loſe the Preſentation. Br. Peremptory, pl. 70. cites 19 E. 3. and Fitzh. Monſtrans 172.

Br Mouſtrans &c. pl 43. cites S. C.

2. In Quare Impedit by the *King againſt the Biſhop and Patron*, it was agreed, that the Biſhop *need not to ſhew the Letters of Preſentation.* Br. Quare Impedit. pl. 65. cites 38 E. 3. 3. 8, 9.

3. If the *King makes Preſentation* to the Biſhop *by his Letters Patents*, the Patent belongs to the Ordinary. *But if he makes Collation*, it belongs to the Incumbent, and he ſhall ſhew it. Br. Monſtrans. pl. 70. cites 9 E. 4. 16.

4. In Caſe of an *Advowſon*, if the Party makes Title where it is by way of Defence, he ſhall ſhew Title. Per Brian. Br. Monſtrans. pl. 60. cites 15. E. 4. 16.

So in Quare Impedit, the Plaintiff made Title, That *J. S. was ſeiſed of the Advowſon*, and *granted the next Preſentation to* one *A.* and after the ſaid *Advowſon became void*, and *A. preſented* L. and after J. S. died, and the *Advowſon deſcended to T. S. who granted the next Preſentation to B.* and *B. died Inteſtate*, and the *Ordinary ſequeſtred and granted the Advowſon to the Plaintiff*, and the Incumbent died, the Plaintiff preſented, and the Defendant diſturbed him, and per Reade Brian, Davers, and Fineux, he ſhall ſhew all the Deeds, except the *Deed made by J. S.* For that *does not belong to the Plaintiff, nor does he make his Title by it*, nor does he claim by J. S. But Vaviſour contra; For by this Preſentment J.S. was out of Poſſeſſion, and therefore he ought to ſhew the Deed to prove that it was not granted but for one Turn only. Br. Monſtrans. pl. 111. cites 9 H. 7. 23.

5. In *Quare Impedit* the Plaintiff made Title, That *J. S.* was *ſeiſed of the Manor* of B. *to which the Advowſon is* and was *Appendant*, and *granted the next Preſentation to B.* and the ſaid *B. granted it to A.* which *A granted to the Plaintiff*; the Plaintiff muſt ſhew all the Deeds of the Grants. Per Fineux and Vaviſour, Quod fuit Conceſſum. Br. Monſtrans. pl. 109. cites 9 H. 7. 16.

6. In Quare Impedit the Plaintiff *declared, that* A. his Anceſtor *was ſeiſed* in Fee of the Vicarage of B. in Groſs &c. *and ſo ſeiſed granted the next Avoidance to* E. who granted it over to F. and that the Church becoming void by the Death of the Incumbent, the ſaid F. preſented J. N. who was admitted &c. that afterwards A. by Deed granted the ſaid Advowſon to *Truſtees and their Heirs, to the Uſe of A. for Life*, then *of B. his Son* and Heir, *and the Heirs Male of his Body*; and for Want of ſuch Iſſue, to the Uſe of the Heirs Male of the Body of B. And *that during* the Time of *the Troubles in* 1659. *the Church voided, and that* one *W. R. by Uſurpation preſented T. S. who was put into Poſſeſſion by the Perſons then in Authority, and was afterwards by the* 12 *Car.* 2. *confirmed* in the ſaid Church *for his Life*; *that the Church became void, and* that *it belonged to the Plaintiff as Heir in Tail of B. to preſent.* The Defendants demurr'd, becauſe the Plaintiff had not pleaded the ſaid Grant by A. to the Truſtees, with a Profert; for that here the Deed is neceſſary Ex Inſtitutione Legis, to make it a good Grant, becauſe without the Deed the Advowſon will not paſs. But it was reſolved, That in this Caſe the Plaintiff ſhall not be compell'd to produce it. 1ſt. Becauſe it *does not belong to* him who is only *Ceſty que Truſt*, *but* it belongs *to the Grantees.* 2dly. Becauſe he *has no Remedy* in Law *to get Poſſeſſion of it.* 3dly. He is in merely by Operation of Law, and not in the Per. Carth. 315. Trin. 6 W. & M. Reynell v. Long.

(B. d. 18) *Iſſue. Upon what* to be *taken, and of what* Things the *Jury muſt inquire.*

See (B. d. 19) pl. 5.

1. IN a Quare Impedit, beſides the Point in Iſſue, the Jury ought Ex Officio to inquire. 1 *De Plenitudine Eccleſiæ.* 2dly. Et *ex Cujus præſentatione.* 3dly. *Si tempus ſemeſtre præteriit.* 4thly. *De Valore Eccleſiæ per Annum.* Jenk. 206. pl. 36.

2. In Quare Impedit by the *King*, who *made Title by Seiſin of the Temporalties of the Biſhop of R.* and *that R. late Biſhop of B. preſented to the Hoſpital of C. R. his Clerk, who was received and inſtituted, and voided by Permutation made between R. and a Prebendary*; and the Defendant *ſaid that the Hoſpital is not Permutable.* And the Court ſaid they would not try the Cauſe of the Voidance, but *whether it voided while the Temporalties were in the Hands of the King, or not*; quod nota. Br. Quare Impedit, pl. 69. cites 21 E. 3. 6. 7.

3. In Quare Impedit by the *King againſt the Biſhop of S. of the Prebend of H.* he *pleaded, that after the Voidance, the King preſented E. who was received and inſtalled*, and the *other that he was not received and inſtalled*, and the others e contra. Br. Quare Impedit. pl. 68. cites 21 E. 3. 50. & 40 E. 3. 17.

In Quare Impedit by the *King*, the *Incumbent ſhewed Collation* made to him *by the Biſhop, by which he was inducted and inſtalled, and* after the *King confirmed to the Incumbent for Life*, Judgment; And the *King ſaid that he was not inducted nor inſtalled at the Time of the Confirmation*, and after the *Iſſue* was taken *upon the Induction only, and not upon the Induction, and Inſtallation.* Br. Quare Impedit. pl. 50. cites 11 H. 4. 7.

4. In Quare Impedit the Defendant *pleaded, that the Church was full by 6 Months before the Writ purchas'd* of his own Preſentment, Judgment of the Writ; and there the Iſſue was taken if it was void or not, and not if it was full or not; quod mirum. Br. Quare Impedit, pl. 21. cites 40 E. 3. 20.

5. In Quare Impedit the *Defendant ſaid*, That *he is in of the Preſentment of the ſame Plaintiff*, and *he ſaid* that he *did not preſent, Priſt*; and the others e contra. Br. Quare Impedit, pl. 25. cites 42 E. 3. 8.

6. In Quare Impedit the *Defendant ſaid, that there is No ſuch Church in the ſame County*; and held a good Plea, by Reaſon of the Viſne. Br. Quare Impedit, pl. 33. cites 45 E. 3. 6.

So, that *Nul tiel Vill* &c. in the ſame County. *And* ſo in Præcipe quod reddat of the Manor of D. to ſay that there is No ſuch Manor in the ſame County; and after *Iſſue* was taken if *there is a Church known by ſuch Name* in the ſame County or not. Ibid.

7. Quare Impedit by the *King*, and *made Title by Tenure of him as Appendant to the Manor of D.* The *Defendant ſaid that Not appendant*, Priſt; and the *King ſaid that he and his Anceſtors Time out of Mind, have preſented to it as appendant, Priſt* &c. and was not ſuffer'd to have ſuch Iſſue, but to rely upon the Appendancy, viz. Appendant or Not Appendant &c. quod nota. Br. Quare Impedit, pl. 38. cites 46 E. 3. 30.

8. Quare Impedit was *Præſentare ad Eccleſiam de B.* The *Defendant ſaid that it was only the Chapel of B. and Time out of Mind had been, and is within the Pariſh of C.* and becauſe the Writ did not ſay Ad Capellam, he prayed Judgment of the Writ; and the Court being of Opinion that the Writ ſhould abate, the Plaintiff ſaid that the Church is *Parochial*, and the other ſaid that it is a *Chapel and Not Parochial.* But the Court ſaid they would be adviſed if this be an Iſſue. Br. Quare Impedit, pl. 77. cites 8 H. 6. 37.

9. Where a Man preſents, and his *Title is found upon a Jure Patronatus*, and *he ſues to have his Clerk admitted*, and after *another preſents*, there, *if the Biſhop might have admitted the Clerk of him who had the Verdict, and*

did not, but deferr'd till the Lapſe fell, and then preſented his own Clerk; in this Caſe he is Diſturber againſt both the Preſentors; and *Iſſue* ſhall be taken *whether he who preſented, and had his Title found, ſued to have his Clerk admitted or not, and whether the ſecond preſented to him ſo haſtily that he could not admit the Clerk of the firſt by due Proceſs before the Preſentation of the ſecond or not; and ſo the Church not litigious.* Br. Quare Impedit, pl. 80. cites 21 H. 6. 44.

Br. Replication, pl. 42. cites S. C.

10. In Quare Impedit the Plaintiff *counted that his Anceſtor was ſeiſed* of the Advowſon, and his Clerk in, *and after he granted* the Advowſon *to J. S. for Life*, the Church voided, *J. S. preſented*, and his Clerk in, and *J. S. died*, and after *the Church voided*, by which the *Plaintiff as Heir of the Anceſtor preſented*, and the Defendant diſturb'd him. And it was held that he *ſhall allege the one Preſentation and the other*; for the Preſentation of the Tenant for Life does not make Title to the Plaintiff, nor the Preſentation of a Guardian nor Termor, *and the Defendant ſhall anſwer the firſt Preſentation, and have Iſſue thereupon, and not upon Both.* And per Littleton, He ought to anſwer to Both, but the Iſſue ſhall be upon the firſt only, and the Plaintiff ſhall not reply to him as to the ſecond Preſentment. Br. Quare Impedit, pl. 129. cites 7 E. 4. 20.

11. Quare Impedit of a *Chantery* where the *Compoſition was, that if the Patron does not preſent within one Month*, that *then the Ordinary ſhall preſent*; and the Jury was compell'd to inquire if the Month was paſt, and of the Value of the Chantery, and if it was void or not. Br. Quare Impedit, pl. 131. cites 13 E. 4. 3.

(B. d. 19) *Judgment. When* and *How*, and of the *Entry* thereof.

But if he makes Default *after Continuance taken*, he ſhall have Diſtreſs.

1. IN *Quare Impedit*, if the *Defendant makes Default after Appearance*, the Plaintiff ſhall recover immediately, and his Damages. Br. Proceſs, pl. 27. cites 2 H. 4. 1. 6 R. 2. Which ſeems to be *Diſtreſs* Ad Audiendum Judicium. Br. Proceſs, pl. 27.

And if it had been brought *againſt the Patron and Incumbent*, and found againſt the King, the Judgment ſhould be *Eat ſine die*. Per Markham. Br. Judgment, pl. 14. cites 3 H. 4. * 2. — * It ſhould be 3. b. pl. 11.

2. *Quare Impedit by the King againſt the Incumbent alone*, and at the Niſi Prius it was *found againſt the King*. It was objected that Judgment ought not to be given; for the *Patron is not named in the Writ*; *and* yet *Judgment was given that the Defendant Eat ſine Die, without entering any Cauſe*: So that by ſome, the Judgment ſhall be intended to be for the not naming the Patron, and ſo the King at another Time at no Prejudice; quære inde; for it ſeems that it *ſhall have Relation to the Matter pleaded.* And it was prayed that the Cauſe of the Judgment be enter'd. But per Thirn, It ſhall not be; for it appears in the Record; for if a Man takes Exception to a Count or to a Preſentment, or Indictment, by which it abates, Judgment ſhall be viz. *Pro eo quod it is inſufficient in Law, therefore Nihil capiat*; and the Cauſe ſhall not be entered, becauſe it appears in the Record; quod Mark. conceſſit. And ſo it ſeems that the Words of the Judgment are all one to the Writ, to the Count and to the Bar; but this ſhall be expounded by the Matter which is pleaded, when it goes to the Writ or Count, and when in Bar. And Hull and Hank agreed that this Judgment ſhall have Relation to the Plea. Br. Judgment, pl. 14. cites 3 H. 4. 2.

If the *Sheriff returns Nihil* upon the Summons Pone & Diſtringas *in Quare Impedit*, yet the Plaintiff ſhall recover.

3. In Quare Impedit the Sheriff return'd Nihil at the Summons, and Attachment at the Diſtreſs. And per Danby, Cott, Newton, Paſton and Godred, the *Plaintiff ſhall recover by the Equity of the Statute*; but Martin and Strange contra. Br. Quare Impedit, pl. 152. cites 11 H. 6. 3. Per Aſhton. Br. Judgment, pl. 6. cites 27 H. 6. 5.

4. In

4. In a Quare Impedit *againſt an Archbiſhop, Biſhop and others*, the *Archbiſhop and Biſhop plead that they claim nothing but* the one as Metropolitan, and the other *as Ordinary*, the *other Defendants plead other Pleas*, the Plaintiff has *Judgment againſt the Archbiſhop and Biſhop to have a Writ to the Biſhop*; but in this Judgment againſt them, there is an *Omiſſion of* the uſual Clauſe; *Sed ceſſet executio quouſque* the other Iſſues are tried; and in Truth *no Writ iſſued before the Trial of the other Iſſues*; the Iſſues are found for the Plaintiff, he had Judgment affirmed in Error. In this Caſe *the ſaid Omiſſion was not erroneous*; for it was after Judgment; and if it be Error, it is Error in Executione Judicii; and in this Caſe no Writ of Execution was ſued out againſt them. Jenk. 323. pl. 36. S. C. Roll. Rep. 363. Adjornatur 397. 398. S. P. Held accordingly by Coke, and afterwards Judgment was affirm'd Trin. 14 Jac. B. R. Grange v. Denny.—3 Bulſt. 174. S. C.

5. Quare Impedit by H. againſt B. and the Biſhop and the Incumbent; and as to the Biſhop, whoſe Plea was allowed, Judgment was given that the Plaintiff take nothing by his Writ, and all the *other Defendants conſeſs'd the Action*; and the Jury, which was ready to have paſs'd upon the Iſſue, were put to inquire of the Value of the Church per Ann. which found 20 l. and therefore Judgment of *double Damages* (that is to ſay) of 40 l. was given for the Plaintiff *againſt the other Defendant and the Incumbent, and* the *Judgment entered as well againſt the Incumbent as againſt the other*; for now it was *full by Lapſe*. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12 & 32. 34 H. 6. 11. 38. and 35 H. 6. 18.

6. Where a Man has a *Quare Impedit againſt one*, and the *Defendant has a Darrein Preſentment againſt the Plaintiff, and recovers* in the Darrein Preſentment, and the *Plaintiff is Nonſuit in the Quare Impedit*; the Defendant ſhall have two Judgments againſt the Plaintiff to have Writ to the Biſhop in both Actions. F. N. B. 39. (D).

7. In a Quare Impedit the *Biſhop pleaded*, That he examined the Preſentee, and found him to be *Schiſmaticus inveteratus, of which he gave the Plaintiff Notice, who did not preſent within* 6 *Months* &c. and upon Demurrer the Court gave *Judgment, that the Plaintiff recover againſt the Biſhop his Preſentation* to the Church, and a Writ to the Metropolitan &c. becauſe the Biſhop is Party, *Et idem Epiſcopus in Miſericordia*; afterwards a *Writ of Enquiry of the Value* of the Church *was awarded*; whereupon the Value and other Points of the Writ were found and return'd; and *thereupon Judgment* was *entered again*, viz. That the Plaintiff ſhould have a Writ to the Archbiſhop ut ſupra, and that he recover Damages againſt the Biſhop. *Et Præd. Epiſcopus in Miſericordia*; and this was aſſign'd for Error, becauſe the Biſhop was *twice amerced*, which he ought not to be by Law. But it was anſwered, That *the laſt Judgment was but a Recital of the firſt*, and ſo to give a full Judgment of all, with the Damages, and not a new Judgment; for he can no more have two Writs to the Metropolitan than he can be twice amerc'd; but if it was erroneous, yet the firſt Judgment is good and perfect in it ſelf, and ſhall not be impeached by any Error in the ſecond, becauſe *the firſt was the Judgment* which was *at Common Law* in a Quare Impedit; for before the Statute of W. 2. the Plaintiff never recovered any Damages in a Quare Impedit, and now he may waive the Benefit of that Statute, and take the Judgment at Common Law, if he will. Quod fuit conceſſum per tot. Cur. And ſo the firſt Judgment was affirm'd. 5 Rep. 58. b. Hill. 32 Eliz. upon a Writ of Error in B. R. Specot's Caſe. And. 189. pl. 225. S. C. but not S. P. as to the Damages.—3 Le. 198. pl. 251. S. C. but not S. P. as to the Damages.—Goldsb. 35. pl. 10. S. C. but not S. P. as to Damage.—Jenk. 258. pl. 55. cites S. C. and S. P.

8. Where the King has Judgment *by Default* in a Quare Impedit, he, as well as a Subject, muſt *by Suggeſtion on the Roll ſet forth his ſpecial Title*. Per Holt Ch. J. 2 Salk. 559. pl. 2. Trin. 5 W. & M. in Caſe of The King &c Biſhop of London and Dr. Lancaſter.

(B. d. 20) Judgment. *What recover'd*, and *who* ſhall *have Execution*, and the *Effect* thereof.

1. BY Quare Impedit a Man *ſhall not recover the Advowſon but the Preſentment*; but if he has Execution, all others beſides the Incumbent, are thereby *out of Poſſeſſion*. Br. Quare Impedit, pl. 7. cites 9 H. 6. 56.

2. If a Man recovers in Quare Impedit, and dies, his *Heir* ſhall not have Execution, and therefore it is not a Real Action. Per Rolf. Br. Quare Impedit, pl. 7. cites 9 H. 6. 56.

(B. d. 21) Of *Damages* and *Coſts* &c.

Before the making of this Act the Plaintiff in Qua. Imp. recovered no Damages, leſt any Profit, the Patron ſhould take, ſhould favour of Simony, which

1. 13 E. 1. cap. 5. S. 3. ENACTS, That *from henceforth in Writs of Qua. Imp. and Darrein Preſentment* Damages *ſhall be awarded, that is to wit, If the Time of* * 6 *Months paſs by the Diſturbance of any,* † *ſo that the Biſhop do confer to the Church, and the very Patron loſeth his Preſentation for that Time, Damages ſhall be awarded for two Years* ‡ *Value of the Church. And if the* 6 *Months be not paſs'd, but the Preſentment be deraign'd within the ſaid Time, then Damages ſhall be awarded to the Half Year's Value of the Church. And if the Diſturber be not able to render Damages, he ſhall in the firſt Caſe have Impriſonment of two Years, and in the other of Half a Year.*

the Common Law did ſo deteſt; And this is the Cauſe that the *King* in a Quare Impedit *recovereth no Damages, becauſe he could recover none by the Common Law*; *and* the King *is not within the Purview* of this Act for the Cauſes ſhew'd in Boſwell's Caſe. 2 Inſt. 362. — S. P. Co Litt. 17. b.

The *King ſhall not recover* Damages *in Quare Impedit for Lapſe nor Diſturbance.* Br. Damages, pl. 15. cites 34 H. 6. 3. ——— S. P. Br. Prerogative, pl. 110. cites Fitzh. Quare Impedit 54. ——— S. P. For *Damages are given only where there may be an Uſurpation* by W. 2. 5. And there can be no Uſurpation upon the King. Jenk. 281. pl. 7.

Tho' the King declares Ad Damnum &c. yet he is not within the Statute. The firſt Part of the Clauſe for Recovery of Damages is, Si tempus Semeſtre tranſierit &c. Now He is not within this Part of the Clauſe for Recovery of Damages; for by his Prerogative he cannot loſe his Right of Preſentation, tho' the Biſhop has collated. And then the ſecond Clauſe (viz. *Et ſi tempus Semeſtre non tranſierit* &c.) is only dependant on the firſt; and ſo, as he is not within the 1ſt, he cannot be within the 2d. 6 Rep. 51. Mich. 3 Jac. Boſwell's Caſe.—— S. P. Le. 149. pl. 207. Trin. 36 Eliz. B. R. The Queen v. Buckbeard. ——— Cro. E. 162. Bugbeard v. the Queen.

Some think that the *King* ſhall recover Damages in a Quare Impedit; and it ſeems to them to be weak Reaſoning, that he ſhall not recover ſingle Damages, becauſe he can't recover double; *Argumentum a majori ad minus* Negative non valet, valet e converſo. The King ſhall have Benefit of any Statute tho' he be not named in it. Coſts are given at Common Law in a Quare Impedit in the Time of E. 1. Fitzh. Quare Impedit 161. Damages were given to the King in a Quare Impedit, and thoſe Judges were living when the ſaid Statute of Weſtminſter 2 was made. Jenk. 281. pl. 7. cites Brooke's Caſes. 22 H. 8. 17.

And foraſmuch as no Damages were in a Quare Impedit at the Common Law, and this Act after the Statute of Glouceſter giveth Damages only, the Plaintiff ſhall recover *no Coſts*. 2 Inſt. 362. ——— S. P. Br. Coſts, pl. 1. cites 27 H. 6. 10. For where Damages are given by Statute after the Statute of Glouceſter in certain out of the Courts of the Common Law, a Man ſhall recover that which is limited in the Statute, and not otherwiſe; As in Decies tantum, the Plaintiff ſhall recover no Coſts. Contra, it is ſaid in Raviſhment of Ward; and therefore he ſhall not have Coſts in Quare Impedit. Br. Coſts, pl. 1. cites 27 H. 6. 10. — *At Common Law* a Man ſhould recover Coſts in Quare Impedit, but *contrary after the Statute*, becauſe the Statute gives now great Damages in Quare Impedit. Per Newton; But all the Argument there was for Damages. Br. Coſts, pl. 25. cites 9 H. 6. 32.— But H. 22 H. 8. Spilman J. agreed with Newton.— S. P. Jenk. 234, pl. 36. —— S. P. Jenk 281, pl. 7. Ad Finem. —— S. P. Br. Damages, pl. 182. cites 9 H. 6. 30 ——— But Trin. 11 Ann. It was held Per tot. Cur. That where *Judgment* is given *for the Defendant upon a Demurrer* in Quare Impedit, the Defendant ſhall have his Coſts. Rep. of Pract. in C. B. 4. Anon. [This ſeems to be by Reaſon of the Stat. 8 & 9 W. 3 cap. 11. S. 2.]

In a Quare Impedit againſt a Prior, Patron, and Incumbent, the Prior pleaded in Bar, and the Incumbent pleaded the ſame Plea, whereupon Iſſues are joined, the Prior dies, and the Iſſue is found for the *Incumbent*, he *ſhall not recover Damages by this Act*, for he cannot have a Writ to the Biſhop and he continued in Poſſeſſion. 2 Inſt. 362.— S. P. 12 Mod. 547. in the Caſe of Pratt v. Rutleis —— S P. Br. Damages, pl. 182. cites 9 H. 6. 30.—— Br. Quare Impedit, pl. 6. cites S. C. —— *But* Per Newton in Quare

Quare Impedit againſt Patron and Incumbent, if the *Patron* dies, and the *Plaintiff is Nonſuited*, the *Incumbent ſhall recover* Damages by the Statute of Weſtminſter 2. For the Incumbent may plead. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25. ——— *And* where *Patron and Incumbent plead one and the ſame Plea*, there *both ſhall recover* Damages *if the Incumbent was admitted*; for otherwiſe he ſhall not recover Damages; per Newton. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25. ——— *So* where an Abbot claims to hold in Proprios Uſus, he ſhall recover Damages; for he is Patron and Incumbent. Br. Quare Impedit, pl. 6. cites 9 H. 6. 3.

* If *upon the Foundation of a Chauntry the Compoſition is*, That *if the Patron preſent not within a Month the Ordinary ſhall collate*; In a Quare Impedit brought for this Chauntry, *if the Month be paſt, the Plaintiff ſhall recover* Damages *for 2 Years* within the Equity of this Statute; for that the Patron, in this Caſe, loſeth the Preſentation, altho' the Words of the Statute be Per tempus Semeſtre, and this is *Per tempus Menſis tantum*. 2 Inſt. 361, 362.

† Here [*Conferat*] is to be taken for Legitime Conferat. 2 Inſt. 363.

Albeit the Biſhop hath not collated, yet if he hath *Jus Conferendi*, the Plaintiff ſhall, if he will, recover double Damages within the Meaning of this Act. 2 Inſt. 363.

But albeit the 6 Months be paſt, ſo as the Biſhop hath a juſt Title to preſent by Lapſe, yet *if the Church remains void*, the Plaintiff at his Peril may pray a Writ to the Biſhop; but then *he ſhall not recover* double Damages, *but for Half a Year only*; becauſe, in that Caſe, he ſhall recover his Preſentation; So that it is in the Plaintiff's *Election*, in that Caſe, either *to loſe his Preſentation and have double Damages, or to have his Preſentation and ſingle Damages*. 2 Inſt. 363. — If he takes a *Writ to the Biſhop at his Peril, he ſhall not have* Damages *after 2 Years* to the Value of the Church, *tho' the Biſhop has preſented by Lapſe*; for he takes Notice thereof at his Peril. Br. Damages, pl. 189. cites 11 H. 4. 80. ——— Br. Quare Impedit, pl. 53. cites S. C.

The *Plaintiff* in a Quare Impedit, *after Appearance, was nonſuited*; whereupon the *Court awarded a Writ to the Biſhop* for the Defendant, and a Writ to the Sheriff to enquire when the Church became void, the yearly Value thereof, and whether the Church was full &c. The Sheriff returned the Time of the Voidance, the yearly Value, and that *the Biſhop had collated by Lapſe*; whereby it appeared *Tempus Semeſtre was paſt before the Writ could be ſerved, yet* ſeeing the *Judgment* was *given within the 6 Months, he could recover* the Damages *but for Half a Year*. 2 Inſt. 363. — S. P. Br. Damages, pl. 151. cites 24 E. 3. 25. — Br. Quare Impedit, pl. 93. cites S.C. Brooke ſays, The Reaſon ſeems to be, inaſmuch as *where the Biſhop makes Collation within the 6 Months, his Clerk ſhall be removed*, and therefore only Damages of Half a Year; *but where* the Biſhop has made Collation *after the 6 Months, and the Party has Judgment after the 6 Months*, there the Clerk ſhall not be removed, and therefore he who recovers ſhall have Damages of 2 Years; Note the Difference. Br. Quare Impedit, pl. 93. cites 24 E. 3. 25.

And it is to be obſerved, That albeit the *Biſhop doth collate*, yet if *his Incumbent is removed by Judgment* within the 6 Months, or after, the *Plaintiff ſhall recover* the Damages *but for Half a Year*; for the Words of this Branch are Et verus Patronus ea Vice Præſentationem ſuam amittat; So that if he loſe not his Preſentation, the Collation of the Biſhop is not material. 2 Inſt. 363.

‡ This ſhall be accounted *according to the very true Value*, as the ſame may be Lett. 2 Inſt. 363.

2. In *Quare Impedit, if Writ is awarded to the Biſhop, who will not receive the Preſentee*, this is a Contempt to the King, and the Plaintiff ſhall recover Damages againſt him. Per Thorp. Br. Contempts, pl. 5. cites 38 E. 3. 12. Br Brief al Eveſque, pl. 12. cites S.C.

3. Quare Impedit *againſt the Biſhop* of N. *and another Quare Impedit againſt J. T. of the ſame Church*. The *Biſhop confeſs'd the Diſturbance*, and *J. T. travers'd the Title of the Plaintiff*, and found for the Plaintiff, and the Value of the Church 40 Marks, and that the Church is *full of the Preſentment of J. T.* and the Biſhop is Ordinary, and the 6 Months are paſt. The Plaintiff pray'd Writ to the Biſhop, and Value of the Church by 2 Years; But per Thorp, *You cannot have the Value of 2 Years and Writ the Biſhop*. And becauſe the Ordinary cannot have the Lapſe where he confeſſes the Diſturbance, therefore it was awarded, That the Plaintiff ſhall have Writ to the Biſhop, and Damages of Half a Year &c. Quod nota bene. Br. Quare Impedit, pl. 103. cites 39 E. 3. 15.

4. In Quare Impedit they were at Iſſue, and 'twas *found*, *That at the Time when the Jury was charged the Church was void, and at the Time that they gave their Verdict it was full of the Preſentment of the Biſhop by Lapſe*; and the Plaintiff recovered Damages of 2 Years by Judgment. Br. Damages, pl. 26. cites 43 E. 3. 10. Br. Quare Impedit, pl. 27. cites S.C. and that the Plaintiff *recover'd his Preſentment and Damages* for 2 Years, notwithſtanding the Defendant alleg'd, That the Plaintiff *had recover'd Damages of Half a Year in another Quare Impedit againſt A. B.* ——— If the *6 Months paſs pending the Writ*, ſo that *the Biſhop preſents by Lapſe*, now the Plaintiff cannot have the Preſentment, and yet the Writ ſhall not abate, but he ſhall recover all in Damages; and therefore, to prevent this, it is uſual to name the Ordinary in the Quare Impedit. Br. Quare Impedit, pl. 147. cites 9 E. 4. 30. —— S.P. Br. Brief, pl. 220. cites 9 E. 4. 50. Per Choke.

5. In Quare Impedit the Plaintiff recover'd, and if there be no other Diſturbance but the *Preſentation of the King, who has revok'd it*, and there was *no other Diſturbance by the Incumbent*, the Plaintiff ſhall not have Damages. Br. Damages, pl. 171. cites 44 E. 3. 35.

But the Opinion of Kirton and Cand. was, That he ſhall not have it; for the *Plaintiff and Defendant are each Actor againſt the other*,

6. Quare Impedit *by A. againſt* 2. *One made Title to have Turn*, and *the other the like*; and *'twas found, that it was the Turn of one Defendant, and likewiſe againſt the Plaintiff and againſt the other Defendant*; and by the beſt Opinion he ſhall have a Writ to the Biſhop againſt both, and Damages *againſt the Plaintiff and the other Defendant*. But Brooke makes a Quære; for there is no Original between the 2 Defendants. Br. Damages, pl. 173. cites 45 E. 3. 14.

and each may recover againſt the other. Contra of one of the Defendants againſt the other, and therefore ſhall have Judgment againſt the Plaintiff only. But Finch Contra; and that the one Defendant ſhall have Attaint againſt the other. And Per Kirton, Where two Defendants are in Quare Impedit, and the one can ſhew Title to bar the Plaintiff, there it ſhall not be inquir'd if the other be a Diſturber or not And in Quare Impedit againſt two, if the one comes and pleads to Iſſue, the Inqueſt ſhall be taken between the Plaintiff and him, tho' the other does not come; and if it be found for the Defendant againſt the Plaintiff, it ſhall not be inquir'd nor Title made againſt the Plaintiff; but Finch deny'd it, and ſaid that the one Inqueſt ſhall not be taken againſt the other. And ſo in Ward upon Priority the one Inqueſt ſhall ſtay the other &c. Br. Quare Impedit, pl. 35. cites S. C.

Br. Quare Impedit, pl. 36. cites S.C. and Plaintiff recover'd the Preſentment alſo.

7. In Quare Impedit *after* 6 *Months* paſt, 'twas awarded, That the Plaintiff ſhould recover Damages for 2 Years *as well againſt the Incumbent as againſt the Defendant*, becauſe *both had counterpleaded the Plaintiff's Title* and the Diſturbance; and yet it did not appear, whether the Ordinary had preſented by Lapſe or not. Br. Damages, pl. 185. cites 46 E. 3. 15.

8. 'Twas admitted, That in *Scire facias in Nature of Quare Impedit upon Compoſition to preſent by Turn between Parceners* the Plaintiff ſhall recover the Preſentment and Damages. Br. Damages, pl. 36. cites 50 E. 3. 23.

Br. Quare Impedit, pl. 43. cites S.C. but ſays, That if he had made

9. In Quare Impedit the Plaintiff ſhall recover, and ſhall have a Writ, to the Biſhop, and Damages *upon the Default of the Defendant after Appearance*. Quære, if it had been after a Continuance. Br. Damages, pl. 192. cites 2 H. 4. 1.

Default after Continuance, a Diſtringas ſhould iſſue, as appears H. 6. R. 2. —— Br. Quare Impedit, pl. 151. cites S. C.

10. In Quare Impedit the *Plaintiff made Title by the Heir in his Ward*, the *Defendant made Title by Coparcenary to preſent by Turn*; to which the *Plaintiff ſaid, That ſaving to him his Courſe at another Time that Ne Diſturba pas*; Wherefore Hull awarded for the Defendant a Writ to the Biſhop, and a Writ of Enquiry of Damages againſt the Plaintiff; for it does not lie in the Mouth of the Plaintiff to plead this Plea. Br. Brief de Enquire &c. pl. 12. cites 5 H. 5. 10.

And where *Judgment* is given, and *Quod Ceſſet Executio*, yet

11. In Quare Impedit, if one *ſues Execution of the greater Damages*, he ſhall make *Mention* of *all the Record*. Per Priſot. Br. Pleadings, pl. 51. cites 30 H. 6. 5.

he ſhall make Mention of this alſo, tho' it be againſt him. Ibid.

12. In Quare Impedit the *Biſhop pray'd Damages*. And Per Aſhton, Danby, Newton and Porting, he ſhall recover Damages; But by others he ſhall not recover Damages, unleſs he can have Writ to the Biſhop, which he cannot have. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

So if I preſent my Son, who is admitted, and Quare Impedit is brought

13. If I preſent, and my *Clerk is inducted*, and *J. N. brings Quare Impedit* againſt me for this *and after is nonſuited*, I ſhall have Damages, and yet cannot have Writ to the Biſhop. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25. Per Aſhton.

againſt me and my Son, and after Title made I die, and the *Plaintiff is nonſuited*, my *Son ſhall recover Damages*

nages, and cannot have Writ to the Biſhop. Ibid. —— *And* Per Danby, If the *Defendant intitles himſelf* in a Quare Impedit *to hold* the Church *in proper Uſe*, and the *Plaintiff is nonſuited*, the Defendant ſhall recover Damages, and cannot have Writ to the Biſhop. Ibid. —— *So* where the Defendant in Quare Impedit *claims free Chapel to induct his Clerk without Preſentation to the Biſhop*, and the *Plaintiff is nonſuited*, the Defendant ſhall recover Damages, and no Writ to the Biſhop. Ibid.

14. A Man ſhall recover Damages in Quare Impedit *where he was never diſturb'd*. Per Newton. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

As where *I preſent*, and *my Clerk is* admitted and J. N. *admitted*, and *J. N. brings Quare Impedit* againſt me, *and is nonſuited after Iſſue*, I ſhall recover Damages. Ibid.

15. A Man may recover Damages for two Years in Quare Impedit, and *yet the Church is not full by the Biſhop*, for it was a *Chantery by Creation, and without Cure of Souls*. Br. Damages, pl. 164. cites 13 E. 4. 3.

Br. Quare Impedit, pl. 131. cites S. C.

16. In Quare Impedit, if the Defendant *pleads*, that *Ne diſturba pas*, the Plaintiff ſhall have Writ to the Biſhop immediately, and Writ of Enquiry of Damages, and Judgment thereof after, per tot. Cur. except Brian. Br. Judgment, pl. 122. cites 13 E. 4. 7.

Br. Quare Impedit, pl. 132. cites S. C. —— S. P. Br. Brief, al Eveſque, pl. 14. cites 21 H 6. 45. and 22 H. 6. 28, 29.

17. In Quare Impedit *againſt three*, the Plaintiff *recovered by Default againſt one*, and Judgment was, that he have Writ to the Biſhop, and Damages for half a Year, and Ceſſet Executio till it be try'd againſt the other Defendants; for otherwiſe this Execution againſt the one alone, ſhall abate the Writ againſt the others; for he cannot recover the Preſentation againſt the others when he has the Preſentation by the firſt Judgment; as in Treſpaſs againſt two, and it is tried againſt the one, and he takes Execution againſt him, the Writ ſhall abate againſt the other. Br. Quare Impedit, pl. 137. cites 20 E. 4. 1. and 10 E 4. 11. 13.

S. C cited Arg. 3 Buls. 174. in Caſe of Grange v. Denny.

18. Where a Man has a *Quare Impedit againſt one*, and the *Defendant has a Darrein Preſentment againſt the Plaintiff, and recovers* in the Darrein Preſentment, and the *Plaintiff is Nonſuited in the Quare Impedit*, the Defendant ſhall have two Writs to enquire of the Damages, but he ſhall not render double Damages for one Diſturbance. F. N. B. 39. (D)

19. Damages for half a Year were adjudged, where it appeared that the *Summons was not Dereigned within the 6 Months*, and held good. D. 77. pl. 35. Mich. 6 E. 6. Henſlow and Stanby v. Biſhop of Sarum and Keble.

20. In Quare Impedit the Jury found the Value of the Church only. The Omiſſion of the other three Points may be ſupplied by Writ of Enquiry of Damages. D. 135. Marg. pl. 12. cites 10 Rep. 118. fol. 119.

And ſuch a Precedent is in the Book of Entries, fol. 110. Et *quod Interim ceſſet Executio de Brevi Epiſcopo habend'*, and at length the Plaintiff relinquiſhed his Damages, and had Judgment and Writ to the Biſhop; Quod Nota. D. 135. pl. 12. Mich. 3 & 4 P. & M. Poyner v. Charleton and Charels. —— And the reaſon, why ſuch Omiſſions in the finding by the Jury in a Quare Impedit may be ſupplied by a Writ of Inquiry of Damages, is, becauſe as to the 4 Points to be inquired, no Attaint lies of them; For as to them it is only an Inqueſt of Office. 10 Rep. 119. Mich. 10 Jac. per Cur. in Cheyney's Caſe. cites 11 H. 40. 80.

21. The *Patron* Defendant *died pending* the Quare Impedit for a Preſentment to a *Prebend*, yet the Plaintiff had Judgment to recover the Preſentment and Damages to 10 l. only, and to remove the Incumbent and a Writ to the Biſhop Ad Petitionem Querentis dirigend'. D. 194. pl. 33. Mich. 2 & 3 Eliz. Biſhop Litchfield and Merrick's Caſe.

22. In Quare Impedit *againſt the Archbiſhop*, the *Biſhop* of Lincoln, *and one G.* they *all made Default at the Diſtreſs*, and Judgment was given againſt them for the Plaintiff to have a Writ to the Biſhop, and to recover *Damages againſt all* of them, becauſe by this Default all of them are ſuppoſed to be Diſturbers; *but* the *Plaintiff was compelled to make Title*,

D 241. a. pl. 48. Trin. 7 Eliz. S. C. and the Inquiſition found that

the Church was void for 3 Years past, and remained void two

Title, and Process issued to inquire whether the Church is void, and how long, and of what Value &c. Mo. 81. pl. 214. Hill. 17 Eliz. Watson v. Bishop of Canterbury & al.

Years and more, and that the Church is now full of G. of the Collation of the said Archbishop; and by the Opinion of the Court Judgment was given, that the Plaintiff recover the Presentation, and have Writ to the Bishop of Lincoln aforesaid, and Damage to the Value of the Church to half a Year &c. and that all the Defendants be in Misericordia.——Bendl. 149. pl. 207. S C. says, The Plaintiff had Judgment to recover his Presentation and Damages for two Years, and that he was of Counsel with he Plaintiff.

But see Cro. C. 175. Earl of Pembroke v. Bostock, where Damages were mitigated on Account of the Clerk's having had Possession.

23. *Error of a Judgment* in Quare Impedit, the Judgment being for the Plaintiff, and the Value of the Church found to be 80 l. per Annum, a Writ of Error being brought of the Judgment *before the Exigi Fac.* and after the Record removed, and the Judgment being affirmed, and having depended a Year and more, the Court awarded, that the Defendant in Error should have *Damages for a Year*, during which Time the Writ of Error was depending according to the Value of the Church found by the Verdict, which was 80 l. per Annum, and they awarded him 80 l. *besides Costs*, according to the President in 6 Edw. 6. D. 77. Cro. Car. 145. Mich. 4 Car. pl. 24. Anon.

24. If upon a *Writ of Error* brought *Judgment be affirmed*, the Defendant in the Writ of Error shall have Damages; Per Whitlock J. Godb. 439. Trin. 5 Car. Earl of Pembroke v. Bostock.

S. C Skin. 25. Mich. 33 Car. 2. C. B. says, The Question was, If the Plaintiff should have Costs? And it was ruled, That if it be a Quare Impedit by Common Law, then there shall be no Costs; but otherwise if by Statute; And if the Church is full of the Defendant by Institution, then it is a Quare Impedit within the Statute; but if it is not, then it is at Common Law; and cites Co. Ent. 508, 509.—3 Nelf. Abr. 35. tit. Quare Impedit (C) pl. 6. in abridging this Case of Lev. 59. says the Court was of that Opinion, viz. that the Plaintiff ought not to have Damages for the Value of half a Year. [But I do not observe any Thing in the Case to that Purpose; and I presume the Law is otherwise.]

25. In a Quare Impedit there was a *Demurrer and an Issue.* The *Plaintiff had a Verdict*, and the Jury who try'd the Issue found the Value of the Church, and that it is yet vacant, and taxed Damages for the half Year; and the Plaintiff had *Judgment likewise upon the Demurrer.* It was moved, that *the Church being yet vacant*, and that the Patron might have the Fruit of his Presentation, he ought not to recover Damages for the Value of the half Year; And the Prothonotaries said, that it is the constant Course, that the Plaintiff shall not recover Damages for the half Year where the Church remains void; And though the Jury tax Damages, yet in such Cases they enter a Remittitur of the Damages where the Church remains void, and so they would have done in this Case without troubling the Court, if the Parties had applied themselves to them. 3 Lev. 59. Trin. 34. Car. 2. C. B. Holt v. Holland.

26. In Quare Impedit to present to the Vicarage of B. the Plaintiff set forth, that E. C. was seised of the Rectory of B. to which the said Vicarage belongs, and that the said *E. C. presented* one S. *and then conveyed* the Rectory *to the Plaintiff F. and others Trustees*, and their Heirs, to the Use of the said E. C. and her Heirs, *till Marriage had* between Her and C. D. *and after to the Use of the Plaintiff's for 500 Years, for raising 4000 l. &c. that the Marriage was had, and so the Plaintiff's possessed* &c. that the Vicarage became void by the Death of S. and so it belonged to them to present. The Bishop claimed nothing but as Ordinary. H. the Incumbent pleaded, that King James I. was seised of the said Rectory in Fee, and that it being void by the Death of L. he presented one Solbear, and so derived a Descent down to King William &c. absque hoc, that E. C. was seised in Fee; there was Judgment against the Bishop, and the Plaintiffs took Issue upon the Traverse, which was tried at the Assises at Exon, and the Plaintiffs had a Verdict; and the Jury farther found, that the Vicarage was full of the Defendant H. Ex Præsenta-

ſentatione of the King, and that it was afterwards void on the 25th of December, 1697, by the Death of Sainthill the laſt Incumbent, and that 20 May, 10 W. 3. the Plaintiffs brought a Quare Impedit againſt the Biſhop and the Defendant, and that the Vicarage was of the yearly Value of 60 l. Ultra Reprizas, and thereupon the Plaintiffs prayed Judgment according to the Statute, and a Writ to the Biſhop to remove the Defendant H. and to admit Idoneam Perſonam at the Preſentation of the Plaintiffs, and Damages to the Value of the Vicarage of the Church for half a Year, and had Judgment accordingly; and a Writ of Error was brought, and the Plaintiff in Error was nonſuited. Lutw. 901. Hill. 10 & 11 W. 3. Biſhop of Exeter and Heskett v. Freake & al.

(B. d. 22) *Error.* And Judgment reverſed.

See (B. d. 19) pl. 4

1. A. *Seiſed of the Manor and Advowſon Appendant had Iſſue B. and died ſeiſed*, and *B. entered and endowed M. his Mother of the* 3d. *Part of the Manor, and the* 3d. *Part of the Advowſon to preſent by Turn*, and *took S. to Wife*, and *demiſed two Parts of the Manor, and the Reverſion of the* 3d. *Part with his Part of the Advowſon in Demeſne and in Reverſion, and retook to him and his Feme for their Lives*, and *preſented twice to the* Advowſon, and *after granted two Acres of the Manor with the Advowſon, to W. who preſented*, and then *W. releaſed to the Heirs of B. and to S. his Feme, all his Right. B. died. M. died*, and the *Church became void. S.* to whom the Eſtate was made for Life, ut ſupra, *preſented*, and *T. the Son of W. the Diſcontinuee, diſturbed, and he brought Aſſiſe of Darrein Preſentment againſt S. and recovered*, and *S. brought* Writ of *Error*; and becauſe the two Parts of the Advowſon which remained Appendant may lie in Diſcontinuance by Demiſe of two Acres with the Advowſon, yet the 3d. Part of the Advowſon which the Tenant in Dower had, which remained in Reverſion and lies in Grant, this does not lie in Diſcontinuance, and therefore the Grant of B. was not good of this but during his Life, and therefore, becauſe the Baron had two Preſentments, this 3d. Preſentment belonged to M. if ſhe had been alive, and now by her Death it belongs to S. to whom it was re-granted for Life, and therefore the Judgment erroneous which was given againſt S. For by the Death of B. her Baron, his Grant was void; wherefore it was awarded, that the firſt Judgment be reverſed, and that *S. have a Writ to the Biſhop, and* that ſhe *re-have her Damages loſt by the firſt Judgment; and of the Damages after* the firſt Judgment *the Court took Adviſement*; and there it was agreed, that though a Man be nonſuited in Writ of Error, he may have another Writ of Error. Br. Error, pl. 121. cites 23 Aſſ. 8.

Br. Preſentation, pl. 38. cites S. C.

2. In Quare Impedit, the *Defendant appeared by Attorney who had no Warrant*, and *Writ was awarded to the Biſhop for the Defendant, becauſe the Plaintiff was demanded and did not come*; and becauſe it was perceived afterwards that the Defendant's Attorney had no Warrant, the *Judgment and Execution were repealed, and Writ of Repeal awarded to the Biſhop*, and the Defendant's Attorney committed to Priſon till they ſhould conſider further what to do with him. Br. Impriſonment, pl. 16. cites 38 E. 3. 8.

3. Error; the *Provoſt of C.* brought Qua. Imp. *againſt J. H.* and *counted, that the Advowſon was Appendant to his Manor of D.* and *ſhewed a Preſentation* in himſelf, *by which his Clerk was inſtituted and inducted* &c. *J. H. ſaid, that one J. was Maſter of the Hoſpital of G. and* was *ſeiſed of the Advowſon as in Groſs in Right of the Houſe, and preſented one P. who was inſtituted* &c. *and the Maſter died, and M. was made Maſter, which M. and his Confreres preſented the ſaid J. H.* now Defendant; and

the *Plaintiff ſaid, that the ſaid J. Maſter, and the ſaid J. H. Defendant, are one and the ſame Perſon*, and not diverſe; upon which they demurred, and the Provoſt Plaintiff had Judgment to recover in C. B. And the Defendant brought Writ of *Error*, and *aſſigned, becauſe he brought Quare Impedit where he is out of Poſſeſſion, and therefore ought to have Writ of Right of Advowſon*; and he ſaid further, *that no Patron is named in the Writ*; and alſo, *that by the Averment that the ſaid J. H. and J. the Maſter are one and the ſame Perſon, and that the Maſter and Confreres preſented the Maſter, he has by this confeſſed no Patron to be named* &c. Br. Error, pl. 83. cites 14 H. 8. 2.

4. The Plaintiffs had a Verdict in a Quare Impedit againſt the Ordinary and the Incumbent, and a Writ awarded to the Metropolitan, and a Fieri Facias to the Sheriff. Writ of Error was brought; and one of the Errors aſſigned was, that *Damages were given for Half a Year*, when it *appears that the Nonſummons was not deraign'd within the ſix Months*; but the firſt Judgment was affirm'd. D. 78. b. pl. 34. Mich. 6 E. 6. Henſlow and Stansby v. Biſhop of Sarum, and Keble.

The Verdict in this Caſe *Ex Officio found*, that the *Incumbent was in by the Preſentation of B.* who is *not a Party to the Writ*; this was aſſigned for Error. Non allocatur; for this finding is only Ex Officio, and the Incumbent by not pleading it, has waived it. If ſuch Plea or Matter had been pleaded, it would not have abated the Writ, but it *would have made the Writ abateable*, and ſuch Matter is not aſſignable for Error. Jenk. 206. pl. 36.

5. A. recovers in a Quare Impedit againſt the Biſhop and Incumbent by Verdict, and has *Judgment before the Judges of Aſſiſe*, and Niſi Prius by the Statute of *Weſt.* 2. 20. A. has a Writ to the Metropolitan, Quia Epiſcopus eſt pars, the Church is in the Dioceſe of the Biſhop Defendant; the Biſhop and Incumbent bring a *Writ of Error directed to the Ch. J. of C. B.* to reverſe the Judgment given there, whereas it was not given there; yet the Writ was good, for there is *no other Form*, and the Original was returnable in C. B. and the Count, Plea and Iſſue, and Venire facias for the Trial, are there. And this is not *like a Judgment in an Aſſiſe*, and a Writ of Error brought upon it; for there the Original, and Proceſs and Verdict, are all before the Juſtices of Aſſiſe. And in ſuch Caſe a ſpecial Writ of Error is framed, and this Judgment in Aſſiſe can only be reverſed in the King's Bench; and ſo it is of a Judgment given by Juſtices of Niſi Prius. Jenk. 206. pl. 36.

Cro. E. 65. pl. 11. S. C. by Name of Biſhop of Glouceſter and Savacre's Caſe, and awarded that the Writ was well brought; for Wray ſaid that the *Biſhop hath Loſs, for* by this Judgment *the Writ ſhall be to the Archbiſhop for Admiſſion and Inſtitution*, and ſo he has Loſs, and therefore may join.——Cro. J. 94 in Caſe of Lancaſter and Lowe, was cited the Caſe of **Jones v. Dixon**, where Jones and the Archbiſhop of York ſued a Writ of Error of a Judgment againſt them, and Jones only aſſign'd the Errors, and therefore held to be ill.——If the Biſhop and Defendant join in bringing a Writ of Error, the Biſhop, unleſs *ſummon'd and ſever'd*, muſt join in the *aſſigning* them. Cro. J. 92 Lancaſter v. Lowe.

6. In a *Quare Impedit by the Queen againſt the Biſhop* of Glouceſter &c. *and one S.* the *Biſhop pleaded that he claimed nothing but as Ordinary*; and *the Queen recover'd*; afterwards *the Biſhop* and *S. joined in* a Writ of *Error*. It was inſiſted that they ought not to join in this Writ, becauſe the Biſhop had diſclaimed the Patronage; *and* the Concluſion of the *Writ was, Ad grave damnum Epiſcopi*, which cannot be; for the Biſhop cannot be grieved by the Judgment, when he neither had or claimed any Thing in the Church. Wray ſaid that it had better been left out, but that the Biſhop ſhall join for Conformity and for Privity of Record; and the Plea of the Biſhop is not ſo ſtrong as a Diſclaimer; for in Diſclaimer the Judgment is, That the Plaintiff take nothing by the Writ, whereas here it is Quod querens recuperet Præſentationem ſuam verſus dictum Epiſcopum ad Eccleſiam prædictam. And afterwards the Writ of Error was awarded good. 3 Le. 176. pl. 228. Trin. 29 Eliz. The Queen v. The Biſhop of Glouceſter.

If a Quare Impedit be brought againſt a Biſhop and others, and Judgment be againſt them all, the *Defendants muſt all join in a Writ of Error*, unleſs where the Biſhop claims only as Ordinary. 3 Mod. 134. in Caſe of Hacket v. Herne.

Noy 66. S. C. but not S. P.

7. The Queen had Judgment in Quare Impedit, by Reaſon of Lapſe; Error was brought, but the *Incumbent was ſummon'd and ſever'd*; and after Judg-

Judgment was revers'd at the Suit of the Heir and Executor, (being the ſame Perſon) and as Heir and Executor. It was ſaid that the Incumbent might well enter, for by the Reverſal there is no Record of the Recovery againſt him. Cro. E. 324. Paſch. 36 Eliz. Pipe &c. v. the Queen.

8. In Error to reverſe a Judgment in a Quare Impedit it was aſſign'd. 1ſt. That a *Stranger* was *poſſeſs'd for Years*, and *deviſed it to the Plaintiff*, *and that he had it by the Aſſent of the Executor*, but did *not ſay Virtute Legationis præd.* 2dly. He *ſhews not how the Church became void*, either by the Death or Deprivation of the Incumbent, nor for what Cauſe; and it might be ſuch a Cauſe for which the Queen ſhould have the Preſentation as for Simony &c. 3dly. Becauſe the Value of the Church is found to be 40 l. per Annum, And the Judgment is, *Quod recuperet Damnum, viz. Medietatem dicti Valoris dictæ Eccleſiæ per Dimidium unius Anni, quæ ſe attingunt ad* 20*l.* which is not according to the Precedents. But the Court being full, the Judgment was affirm'd. Cro. E. 678. Trin. 41 Eliz. B. R. Biſhop of Glouceſter v. Veale.

9. Judgment was given againſt Dr. Harris in a Quare Impedit in C. B. who brought a Writ of Error in B. R. and the Error aſſigned was, for that Auſten the *Defendant in the original Action had pleaded in Bar, that one Peaking was Incumbent, and that the Church became void by his Deprivation* (but *no Time ſhewn when* he was deprived) *and that Queen Mary preſented one Wood Uſurpando on the rightful Patron, who was in for ſix Months* &c. The Plaintiff *replied, That after Wood was preſented* by the Queen, *the Earl of Pembroke, who had purchaſed the Advowſon before, brought a Quare Impedit* againſt the Ordinary and the Incumbent; *to which* the Ordinary pleaded, That he claim'd nothing but as Ordinary, and the *Defendant's Attorney pleaded Non ſum Informatus, by which* he recover'd, and the *Incumbent Legitimo modo amotus fuit*, and it doth *not appear whether* this Quare Impedit was *brought within* 6 *Months after Wood was preſented*: It was inſiſted that this Plea ſhould be taken ſtrongeſt againſt the Pleader, and therefore the Quare Impedit ſhall be intended to be brought within 6 Months; for otherwiſe the Incumbent could not be Legitimo modo amotus: And the Judges being of this Opinion, the Judgment was affirmed. 1 Roll. Rep. 210. Trin. 13 Jac. B. R. Harris v. Auſten. 2 Bulſt. 36. S.C. and 38. S. P.

13. Judgment was in Quare Impedit, and the ſame Term a *Writ of Error* was delivered to the ſame Court, *before a Writ to the Biſhop* was awarded to admit the Clerk. Per tot. Cur. The Writ of Error ought to have been allowed without any other Superſedeas, becauſe a Writ of Error is a *Superſedeas* in itſelf. Godb. 439. Trin. 5 Car. Earl of Pembroke v. Bottock.

11. In Error brought upon a Judgment in Quare Impedit given in Ireland, it was inſiſted that the *Plaintiff muſt ſet forth* both *Seiſin and Vacancy*, but that here he had fail'd in both. For 1ſt. As to the Seiſin the Declaration ſtands thus, *Seiſitus fuit & in advocatione Eccleſiæ*; here the (*Et*) couples nothing, and Seiſitus refers to nothing. 2dly. Vacancy; the Record is thus, *Eccleſia prædict. vacavit per ceſſionem* &c. Now this is pleading a Conſequence *without ſetting forth the Act, of which this is a Conſequence*; it ought to have been pleaded thus, that the Parſon was made a Biſhop, or advanced to a Living incompatible &c. as the Fact was, Per quod Eccleſia præd. vacavit. Third Exception taken to the Record was, That the Concluſion was, *Et hoc paratus eſt verificare*, inſtead of *Inde producit ſectam*, and ſo no Suit before the Court, and that this is not meer Matter of Form. But it was anſwered that the Word (*Et*) may be left out or tranſpoſed thus, Et de Feodo & de Jure. And as to the Vacancy and the Paratus Verificare, Advantage might poſſibly have been taken of them by Demurrer, which Advantage is loſt by taking Iſſue. Per Cur. The Objection of the Seiſin is the ſtrongeſt, for it is *Nonſenſe* at preſent, and every Thing may be cured by Leaving out and putting

putting in. Poſſibly in Tranſcribing the Record (*de*) was omitted; and if the Fact be ſo, it may be ſet right by a Certiorari; *De & in advocatione* would be well. As to the Omiſſion of the Inde producit ſectam, this would have excuſed the Defendant in not anſwering; but in Fact he has anſwered it. And as to the Objection about pleading the Vacancy, it ought to have been pleaded as above objected that it ought to be, but *the Vacancy is admitted by pleading a Preſentment under it.* Adjornatur. 10 Mod. 308 &c. Paſch. 1 Geo. B. R. The King v. the Biſhop of Meath.

See (C. c. 2) pag. 396 the Note in the Middle and the Sections following.

(B. d. 23) *Scire facias* in Quare Impedit, *and Pleadings* therein.

1. IN Quare Impedit *by the King againſt the Patron he recovered, and after confirmed the Eſtate of the Incumbent of the Defendant*, and then the *King had Scire facias upon this Judgment againſt the Patron*; He can't plead this Confirmation made to the Incumbent, for the Incumbent had nothing in the Patronage. Br. Barre, pl. 96. cites 9 E. 3.

2 Where the *King ſeiſes the Temporalties* of a Biſhop *by Judgment*; and *a Prebend annex'd voids*, the King ſhall have Scire facias of the Preſentation, and ſhall have Execution; quod nota. Br. Quare Impedit, pl. 71. cites 21 E. 3. 29.

F N. B. 47. (I.) the Note in the Marg. cites 21 H. 7. 3.

3. A Man had Proximam Præſentationem by Grant; the Church voided; a *Stranger preſented*, and the *Grantee brought Quare Impedit, and recover'd, and had Writ to the Biſhop*, who *returned that the Preſentee of the Diſturber reſign'd, and another is in*; and upon this the Plaintiff had *Scire facias to have Execution*, notwithſtanding that it be a ſecond Avoidance now, *becauſe he recovered the firſt Avoidance*, and the Covin of the Defendant ſhall not prejudice the Plaintiff. Br. Preſentation, pl. 33. cites 21 H. 7. 8.

4. Where *Partition* is made *betwixt Coparceners, by Licence* of the King, of an Advowſon *in a Court of Record*, as in the Common Pleas, and afterwards the *Coparcener who hath the next Turn dieth, her Heir* within Age, and *in Ward to the King*, and the *Church voids*, the King ſhall have a Scire facias againſt the other Coparcener &c. upon that Partition; and yet he was a Stranger to the Partition. F. N. B. 34. (H.)

Ibid. in the new Notes (a) ſays ſee 12 E. 3. 9. 13 H. 8. 14. 22 E. 4. 9. 27 H. 8. 11.

5. If 2 Coparceners *make Partition to preſent by Turns*, although that *one* of the Coparceners *afterwards uſurps upon the other* Coparcener, and preſents in her Turn, that Preſentment ſhall not put her out of Poſſeſſion, but ſhe ſhall have her Turn when it falls again, and ſhall have a Quare Impedit or a Scire facias upon the Compoſition, if it be upon Record, if ſhe be diſturbed to preſent &c. F. N. B. 34. (I.)

F. N. B. 33. (I) in the new Notes there (d) cites 14 E. 2. Quare Impedit 171. 172. That a

6. Where a Man doth *recover in a Writ of Right* of Advowſon, he ſhall preſent *at the next Avoidance*, and ſhall have a Quare Impedit, without alleging any Preſentment to himſelf or his Anceſtors, but ſhall declare upon the Record, or *may have a Scire facias* upon the Recovery, and *ſo may his Heir* have a Scire facias upon that Recovery, againſt the Heir of the other Party, *at the next Avoidance* after the Recovery, *but not after*, as it ſeemeth. F. N. B. 36. (A.)

Man may have a Scire facias on the Judgment for the Diſturbance, but that on the Judgment in a Writ of Right, he had Seiſin delivered by the Sheriff; and yet *becauſe he cannot have Seiſin of the Church without a Preſentment*, when the Church avoids *he ſhall have a Scire facias for the Preſentment*. 15 E. 2. Quare Impedit 172 ———F. N. B. 36 (A) in the new Notes there (b) cites 13 E. 3. Scire facias 118. where the Conuzee of a Fine of an Advowſon brought a Scire facias at the next Avoidance againſt the Heir of the Conuſor, and held good without ſhewing any Preſentment.

7. [*So*] if a Man *recover in Quare Impedit*, he ſhall have a *Scire facias againſt the Patron and the Incumbent who made Default*, if he will ſue Execution of this Recovery. F. N. B. 36. (B.)

Ibid. in the new Notes (c) ſays, He ſhall have a Scire facias *againſt the Heir* at the next Avoidance. 39 E. 3. 25. *But* the *Heir ſhall not have a Scire facias* on a Recovery in a Quare Impedit. 9 H. 6. 57. becauſe in the Quare Impedit the Preſentment only is recoverable, and not the Advowſon.

8. If *Coparceners make Partition in the Chancery, or in C. B. to preſent by Turns*, and afterwards a *Stranger uſurps in their ſeveral Turns*; yet after, *when their Turns come, every of them may have a Scire facias upon this Partition againſt the Stranger*, when his Turn cometh, to ſhew wherefore he ſhould not preſent, notwithſtanding the Uſurpation aforeſaid. But *otherwiſe* it ſeemeth it is *if the Partition be of Record*, then they ſhall be put to their Writ of Right by Reaſon of the Uſurpation. F. N. B. 36. (c)

Ibid. in the new Notes (d) ſays, Yet ſee the contrary, 33 E. 3. Quare Impedit 196. which ſeems not to be Law; for there it was brought againſt an Eſtranger, and held, That tho' by ſuch Uſurpation he put the one Coparcener (whoſe Turn it was) out of Poſſeſſion, yet it did not put the other out of Poſſeſſion. 43 E. 3. 15. 22 E 4. 9.

(C. d) *Aſſiſe of Darrein Preſentment. Who ſhall have it without* any *Preſentment* before.

See (N. c) &c.

1. IF a Tenant by Service of Chivalry preſents and dies, his Heir in Ward, during which Wardſhip the Church voids, the Guardian in Chivalry may well maintain this Writ of Darrein Preſentment if he be diſturbed, tho' he himſelf never preſented before. 32 E. 1 89. Admitted. Contra 50 E. 3. 14. Per Holt.

2. The ſame Law of the Grantee of the Ward, for he may maintain this Writ. 32 E. 1. 89. Admitted.

3. 13 *E.* 1. *cap.* 5. Enacts, That *as often as any, having no Right, doth preſent during the Time that* Heirs *are* in Ward, *or during the Eſtates of* Tenants in Dower, *by the* Courteſy, *or otherwiſe for* Term of Life, *or* * *of* Years, *or* † *in* Tail, ‡ *at the next Avoidance, when the Heir is come to full Age, or when, after the Death of the Tenants before named, the Advowſon ſhall revert unto the Heir, being of full Age, he ſhall have ſuch Action* || *by Writ of Advowſon Poſſeſſory,* ** *as the laſt Anceſtor of ſuch an Heir ſhould have had the laſt Avoidance happening in his Time, being of full Age before his Death, or before the Demiſe was made for Term of Life, or in Fee Tail as before is ſaid.*

* *Tenant for* Term of *Half a Year* or a Year, and *Grantee of the next Avoidance*, are within the Purview and Meaning of this Act; Tenant *by Statute Merchant, or* Staple, or *Elegit*, are within the Purview of this Statute. 2 Inſt. 359.

† *Tenant in Tail* was of a Manor, whereunto an Advowſon was appendant, and *before* this Statute an Eſtranger uſurped, and then *the Stat. of Donis* Condit' and this Act was made Tenant in Tail dies, and the Manor deſcends to his Iſſue; yet the Heir in Tail hath no Remedy, becauſe the Advowſon was ſevered by the Uſurpation; and *this Act extendeth not to Uſurpations before* this Act. 2 Inſt. 359.

But if Tenant in Tail ſuffer an Uſurpation *after* this Act, and dieth, his Iſſue ſhall have Remedy by Quare Impedit within the Purview of this Statute. 2 Inſt. 359.

‡ Note, Albeit the *Heir* hath the Advowſon *by Deſcent*, yet if he ſuffereth an Uſurpation he *hath no Remedy* by this Branch *until after he cometh of full Age*; this is is to be intended *when* the Heir is *in Ward*, for ſo this Act putteth the Caſe; *but if* the Heir be *out of Ward.* he may have his Quare Impedit or his Aſſiſe of Darrein Preſentment during his Minority. 2 Inſt. 359.

|| This is by a *Quare Impedit or* Aſſiſe of *Darrein Preſentment.* 2 Inſt. 359.

** Then put Caſe, That *one purchaſeth* an Advowſon in Fee, *and dieth before* any *Preſentation* made by him, *and this deſcends to his Heir within Age*, the *Church becomes void*; if the Heir be in Ward the Heir may have his Quare Impedit at his full Age; and if he be within Age, and out of Ward, he may have his Quare Impedit, and count of a Preſentation made by him of whom the Purchaſe was made; but he can have no Writ of Right of Advowſon, becauſe neither his Anceſtor nor he never preſented. 2 Inſt. 359.

Note, It is *not ſaid* here *Qualem habuit, but* Qualem *haberet*, as the Anceſtor ſhould have had if the Church had become void in his Time, and his Title to preſent had accrued unto him; for there the Right, or at leaſt the Poſſibility of Action doth deſcend. 2 Inſt. 359.

One ſeiſed of an Advowſon *in Fee, preſents* to the Church being void, *and grants* the ſame *to A. for Life*, and after grants the *Reverſion to K. and his Heirs*; *A.* Tenant for Life *ſuffereth an Uſurpation* to the Church, the Heir of K. having the Right of this Advowſon by Deſcent, ſhall, after the Death of A. the Church becoming void, preſent, and yet K. could not have had a Quare Impedit; but if A. had died before the Uſurpation, then might K. have had a Quare Impedit, and therefore his Heir ſhall have at the

the next Avoidance that Remedy which by the Poſſibility he might have had; And herewith agreeth the Authority of the Book of 2 E. 3. 10, 11. For there Tond taketh this Exception, but doth not demur. 2 Inſt. 359, 360. ——— See (C. c. 2)

4. A Man ſhall have Aſſiſe of Darrein Preſentment, *tho' he nor his Anceſtors did preſent to the laſt Avoidance*; *As if* the *Tenant for Life*, or for *Years*, or in *Dower*, *or by the Curteſy*, *ſuffers an Uſurpation* unto a Church &c. and dies, *he in the Reverſion*, *who is Heir* unto the Anceſtor who laſt preſented, ſhall have an Aſſiſe of Darrein Preſentment, if he be diſturbed. F. N. B. 31. (G)

*F.N.B. 31. (G) in the new Notes there (c) cites 2 E. 3. 11. That the Heir of the Grantee of a Reverſion ſhall avoid this for a Purpriſe on the Tenant for Life; In a Quare Impedit brought by Stanhope againſt the Biſhop of Lincoln, this was denied by all but one. But ſee the contrary held by Moyle and Priſot, 34 H. 6. 26, 27. And ſo is 33 H. 6. 12.

5. *But if a Man preſents*, and then * *grants the Advowſon* unto another *for Life*, *and he ſuffers* one Uſurpation, or 2 or 3 *Uſurpations*, now at the next Avoidance he in the Reverſion ſhall not have an Aſſiſe of Darrein Preſentment, if he be diſturbed to preſent; And that appeareth *by the Statute of Weſtminſter 2. cap. 5.* That *the Remedy* of the Statute *is* given *for the Heir* of him who made the Demiſe, who is in Reverſion, and *not for the Leſſor* himſelf. F. N. B. 31. (G) cites 18 E. 2. pl. 20. 6 E. 3. 41.

6. If the *Aſſiſe finds that Tenant by the Curteſy*, *or* Tenant in *Dower was the laſt who preſented*, by that the *Heir* ſhall have a Writ to the Biſhop, and yet he cannot make Title by that Preſentment. Contra, in a Quare Impedit. And Seton gives the Reaſon, becauſe he cannot convey by them; But if the Heir do allege the laſt Preſentment in herſelf, and the Aſſiſe be to her by Default, and found ut Supra, yet the Heir ſhall recover. Contra, If they be at Iſſue upon that Preſentment. F. N. B. 31. (G) The Note in the Margin.

But if the Infant purchaſe the Advowſon and preſent, and afterward the Church becomes void, and a Stranger preſents and uſurps upon the Infant, and then the Incumbent dies, the Infant preſents, and is diſturbed by a Stranger, he ſhall not have a Darrein Preſentment, but ſhall be put to his Writ of Right. F. N. B. 31. (K) [according to the new Edition, but in the old Editions it is (I) S. 4.]

7. If a Man *uſurps upon an Infant*, and preſents *which* Infant *hath the Advowſon by Deſcent*; and afterwards the *Incumbent dieth*, the Infant ſhall preſent; and if he be diſturbed, he ſhall have an Aſſiſe of Darrein Preſentment. F. N. B. 31. (K) [according to the new Edition, but in the old Editions it is (I) S. 4.]

(D. d) Who ſhall have it *after Preſentment*.

1. IF a Guardian in Chivalry preſents, and after the Church voids, he ſhall have an Aſſiſe of Darrein Preſentment if he be diſturb'd. Fitz. Na. 31. I. Contra 50 E. 3. 14. Per Holt.

Watſ. Comp. Inc. 8vo. 432. cap. 22. cites S. C. See (H. d) pl. 3. and the Notes there.

2. So a Leſſee for Years ſhall have this Writ if he has preſented before. Fitz. Na. 31. I. 5 H. 7. 16. b. Per Fairfax. Contra 50 E. 3. 14. Per Holt. Kell. Incerti Temporis 118. b.

Watſ. Comp. Inc. 8vo. 432. cap. 22. cites S. C. This is the Caſe of the Rectory of Weſt Bod-

3. So a Tenant at Will, after he has once preſented, ſhall have this Writ. Contra 50 E. 3. 14. Per Holt.

4. If the King's *Patentee of an Advowſon preſents twice* to the ſame Advowſon, and his *Clerk is inſtituted and inducted*, tho' the *Patent is void in Law*, ſo that the Advowſon does not paſs thereby, yet the Patentee has ſo

ſo gain'd the Advowſon by Uſurpation againſt all Strangers, That if he be diſturb'd at the next Avoidance, he may maintain an Aſſiſe of Darrein Preſentment againſt a Stranger that has no Title to it. Watſ. Comp. Inc. 8vo. 222. cap. 13. cites Dyer 351. 18 Eliz. win in Wiltſhire D. 350. b. pl. 21. —Bendl. 252. pl. 270. S. C.

(E. d) Aſſiſe of Darrein Preſentment. [*In what Caſes it lies. Eſtate altered.*]

Fol. 381.

1. **He who will have this Writ** ought to have the ſame **Eſtate,** or Parcel of the ſame Eſtate which he had at **the Time of** the firſt Preſentment. Watſ. Comp. Inc. 8vo. 432. cap. 22. cites S. C.

2. **If a Man being** Tenant Pur auter vie **of an Advowſon preſents, and after** his Eſtate is enlarged for his own Life; **and after the Church voids again, he ſhall not maintain an Aſſize of Darrein Preſentment upon the ſaid Preſentment, becauſe it is not the ſame Eſtate nor any Parcel of the Eſtate upon which the firſt Preſentment was, but a** new Eſtate. **Kell. Incerti temporis 118. b.** Watſ. Comp. Inc. 8vo. 433. cap. 22. cites S. C. — This was in Caſe of a *Tenant by the Curteſy* who *preſented in the Life of his Wife*, who was ſeiſed in fee. Keilw. 118. b. —— See pl. 13.

3. So **it is if** Leſſee for Years **of an Advowſon preſents, and after** his Eſtate is enlarged for Life or in Fee, **and then the Church voids, he ſhall not have Aſſiſe of Darrein Preſentment, becauſe he has a new Eſtate by Enlargement.** Watſ. Comp. Inc. 8vo. 433. cap. 22. cites S. C. — S. P. F. N. B. 31. (H) in the new Notes (b) accordingly.

4. **The** ſame Law **if** Leſſee at Will **preſents, and after his Eſtate is enlarged for Life or Years, and this is more ſtrong; For he could not have this Writ upon the firſt Eſtate.** Watſ. Comp. Inc. 8vo. 433. cap. 22. cites S. C.

5. **If** Leſſee for Life **of an Advowſon** upon Condition to have Fee **preſents, and after** the Fee accrues, **and then the Church voids, it ſeems that he ſhall have this Writ, becauſe Parcel of the old Eſtate continues, and he had the Poſſibility of Accruer at the time of the firſt Preſentment.** Watſ. Comp. Inc. 8vo. 434. cap. 22. cites S. C.

6. **If** Leſſee for Years **of an Advowſon preſents, and after** the Term incurs, **and he** takes a new Leaſe for Years **of the Advowſon, it ſeems clearly that he ſhall not have this Writ, becauſe he is in of other Eſtate than that upon which the firſt Preſentment was made.** Watſ. Comp. Inc. 8vo. 433. cap. 22. cites S. C.

7. **If the** Grantee of a next Avoidance preſents, **and after** purchaſes the Advowſon, **and after the Church voids, he ſhall not have this Writ, becauſe this is merely a new Eſtate, and no Parcel of the Eſtate upon which the firſt Preſentment was.** Watſ. Comp. Inc. 8vo. 433. cap. 22 cites S. C.

8. **So if** Leſſee for Years, or Pur auter vie **preſents, and after** purchaſes the Reverſion, **and then** the Years expire, or Ceſty que Vie dies, **and afterwards the Church voids, he ſhall not have this Writ, becauſe he is in of other Eſtate.** Watſ. Comp. Inc 8vo. 433. cap. 22. cites S. C.

9. So **ſhall it be, though the** Church voids during the Years, or **during** the Life of Ceſty que Vie; **For the firſt Eſtate is extinct by his own Act, and therefore he ſhall not have any Benefit of the firſt Eſtate.** Watſ. Comp. Inc. 8vo. 433. cap. 22. cites S. C.

10. **If** two Jointenants for Years, Life, or in Fee **preſent, and then one dies, and after the Church voids,** the Survivor **ſhall have this Writ; becauſe he has the ſame Eſtate which he had upon the firſt Preſentment.** Watſ Comp. Inc. 8vo. 434. cap. 22. cites S. C.

11. If

Watſ. Comp. Inc. 8vo. 435. cap. 22. cites S. C.

11. If Tenant in Fee or in Tail of an Advowſon upon Condition to have for Life or Years preſents, and after his Eſtate decreaſes, he ſhall have this Writ when the Church voids again, becauſe he has Parcel of the old Eſtate.

Watſ. Comp. Inc. 8vo. 435. cap. 22. cites S. C.

12. So if Tenant in Tail preſents, and after becomes Tenant after Poſſibility, and after the Church voids, he ſhall have this Writ, becauſe this is a Remnant of the Tail.

Watſ. Comp. Inc. 8vo. 434. cap. 22. cites S. C. —— F. N. B. 31. (G) in the new Notes there (b) cites Kitchin [but it ſeems it ſhould be Kelw.] 118. that in this Caſe the Husband ſhall have Aſſiſe &c. [But the Caſe ſeems to be only the Arguments on either Side.]

13. If the Baron ſeiſed in Right of his Feme of an Advowſon preſents, and after has Iſſue, and Feme dies, and after the Church voids, the Baron ſhall not have this Writ, becauſe he is in of other Eſtate than that upon which he preſented before; for before he had not any Eſtate, but was only ſeiſed in Right of the Feme, and now he is ſeiſed of an Eſtate for Life. Dubitatur. Bell. incerti temporis. 118. b.

* Fo. 382. Watſ. Comp. Inc. 8vo. 434. cap. 22. cites ſame Caſes.

14. But if the Baron after Iſſue had, had preſented, and after the Feme dies, and afterwards the Church voids, the Baron ſhall have this Writ, becauſe he had an * Inception of an Eſtate for Life by the Curteſy at the firſt Preſentment, the which is now compleated.

15. If a Feme be Leſſee for Life, the Remainder for Life to the Baron, of an Advowſon, and the Baron preſents, and after the Feme dies, it ſeems that the Baron ſhall not have Writ when the Church voids again; becauſe before, he preſented in the Right of the Feme by reaſon of her Eſtate for Life, and now he is ſeiſed of another Eſtate.

16. If the *Husband and Wife preſent to an Advowſon* in the Right of the Wife, which is *appendant to the Manor of the Wife's*, and after the *Huſband aliens one Acre, Parcel* of the Manor, *with the Advowſon in Fee* to a Stranger, *and dies*, and the *Stranger preſents, and aliens the Acre* to another in Fee, *ſaving the Advowſon* to himſelf, and then *the Church voids*, the Wife ſhall preſent; and if ſhe be diſturbed, ſhe ſhall have an Aſſiſe of Darrein Preſentment; becauſe the Advowſon was ſevered from the Acre; but if the Advowſon were appendant to the Acre, then the Wife ought to recover the Acre before ſhe preſent to the Advowſon. F. N. B. 31. (K) S. 2. [according to the new Edition, but in the old Editions it is (I) S. 5.]

Watſ. Comp. Inc. 8vo. 431. cap. 22. S. P.

17. *Wherever a Man may have* Aſſiſe of *Darrein Preſentment, he may* have a *Quare Impedit*, but *not e contra*. Godolph. Rep. 643. cap. 44. S. 1. cites Terms of Law, Verb. Quare Impedit.

See (K. d)— (O d)

(F. d) *What* ſhall be *good Preſentment to maintain it,*

Watſ. Comp Inc. 8vo. 431. cap. 22 cites S. C.

1. If J. S. preſents in my Name, and by my Aſſent, and after the Church voids, this is a ſufficient Preſentment for me to have an Aſſiſe of Darrein Preſentment againſt J. S. for this was my Preſentment. Tr. 5 E. 1. b. Rot. 25. adjudged,

2. Where the *the King or the Pope preſents* to my Advowſon without Title, I ſhall have Aſſiſe of Darrein Preſentment. Br. Darrein Preſentment, pl. 4. cites 3 H. 7. 7.

So if a Man *preſents* unto an Advowſon, and afterwards the *Incumbent dies*, and another Or-

3. If a Man *preſents unto an Advowſon unto which he hath Right*, and afterwards the *Incumbent dies*, and a *Stranger uſurps*, and preſents unto this Advowſon *in the Time of War*, and after that *Incumbent dies*; Now, if *he who hath Right preſents again*, and be diſturbed, he ſhall have an Aſſiſe of Darrein Preſentment, and this Preſentment made in Time of War by the Stranger, ſhall not grieve him. F. N. B. 31. (I)

dinary

dinary preſents by Lapſe another Incumbent, and after that *Incumbent dies*; Now the Right Patron ſhall preſent, and if he be diſturbed, he ſhall have an Aſſiſe of Darrein Preſentment, notwithſtanding the mean Preſentments. F. N. B. 31. (I) —— *But if* a Man *preſents* unto an Advowſon, *and after leaſes the ſame for* Term of *Years*, and after the Church is void, *and the Tenant* for Years *preſents* &c, and then the *Incumbent dies*, and the *Leſſor preſents*, and is diſturbed, it ſeemeth that he ſhall not have an Aſſiſe of Darrein Preſentment, becauſe the *Tenant for Years did preſent in his own Right*. F. N. B. 31. (I)

(G. d) *In what Caſes* the *Preſentment. Of one ſhall be of others.*

See (E. d)

1. A Preſentment by the Grandfather is ſufficient for the Son to maintain this Writ without any Preſentment by himſelf, this being the laſt Preſentment. Tr. 5. E. 1. b. Rot. 25. Watſ. Comp. Inc. 8vo. 432. cap. 22. cites S. C.

2. If a Tenant by Service of Chivalry preſents and dies, his Heir in Ward, during which Wardſhip the Church voids, the Guardian in Chivalry may well maintain this Writ if he be diſturbed, tho' he himſelf never preſented before. 32 E. 1. 89. Admitted.

3. The ſame Law of the Grantee of the Ward; For he may maintain this Writ. 32 E. 1. 89. Admitted.

4. An Heir who comes in by Deſcent ſhall maintain this Aſſiſe upon a Preſentment made by any Anceſtor. Britton. fol. 242. b. Watſ. Comp. Inc. 8vo. 432. cap. 22. cites S. C.

—— If the *Guardian preſents in the Right of the Heir*, and the Incumbent dies, the Heir ſhall preſent; and if he be diſturbed, he ſhall have an Aſſiſe of Darrein Preſentment, although the Guardian did preſent the mean and the laſt Preſentment. F. N. B. (J)

(H. d) Aſſiſe of Darrein Preſentment. *What Perſon ſhall have it.*

See (E. d)

1. Tenant in Fee of an Advowſon may have this Writ without Doubt. Watſ. Comp. Inc. 8vo. 431. cap. 22. cites S. C.

2. Tenant in Taile of an Advowſon may have this Writ as well as Tenant in Fee thereof, and is not neceſſarily put to his Quare Impedit. * 46 Aſſ. 4. Adjudged. * Br. Taile. pl. 24. cites S. C. ——

Aſſiſe of Darrein Preſentment was brought *by the Heir in Tail*, who claimed it *as appendant to a Manor*. Chelre ſaid, he claims in Tail, therefore he ought to have Quare Impedit, and not this Action; But per Finch he may † have the one or the other, therefore Anſwer, Quod nota; And yet the Heir in Tail ſhall not have Aſſiſe of Mortdanceſtor, but Formedon, as appears tit. Formedon in F. N. B. and elſewhere. Br. Darrein Preſentment, pl. 1. cites 46 Aſſ. 4.

† Br. Quare Impedit. pl. 148. cites S. C.

3. Leſſee for Years ſhall have this Writ, if he has preſented before, tho' he has not a Franktenement; For this Aſſiſe is not like to an Aſſiſe of Novel Diſſeiſin. Fitz. Na. 31. I. Contra Kell. incerti Temporis 118. b. See (E. d) pl. 6. S. P. For he ſhall not recover the Advowſon

in the Darrein Preſentment, but only the Preſentation, as in Quare Impedit, per Fairfax J. But *Quære* of the Aſſiſe for Termor; For it ſeems that *none* ſhall have Aſſiſe *by the Common Law, but he who has Title of Franktenement*; But by Statute Tenant by *Statute Merchant & Elegit*, may have Aſſiſe. Br. Darrein Preſentment, pl. 2. cites 5 H 7 16.

4. Guardian in Chivalry ſhall have this Writ, if he has preſented before. Fitz. Na. 31. I. 32 E. 1. 89.

* Upon this Branch, two Concluſions are to be obſerved, firſt, That the Heir in Reverſion is provided for in this Caſe, and not the Leſſor himſelf; For here it is ſaid, Verus Hæres. 2dly, That albeit, Tenant by the Curteſy, Tenant in Dower, Tenant for Life, or Tenant in Tail preſented laſt, yet the *Heir to whom the Reverſion falleth in Poſſeſſion*, ſhall have by this Branch an Aſſiſe of Darrein Preſentment, albeit the Heir or his Anceſtor did not immediately preſent before. 2 Inſt. 362.

5. 13 *E.* 1. *cap.* 5. Enacts. That *where it chanceth that after the Death of the Anceſtor of him that preſented his Clerk unto a Church, the ſame Advowſon is* aſſigned in Dower *to any Woman*, or to Tenant by the Curteſy, *which do preſent*, and after the Death of ſuch Tenants the very Heir is diſturbed *to preſent when the Church is void*,

It is provided, That from henceforth it ſhall be in the Election *of the Party diſturbed, whether he will ſue a Writ* of Quare Impedit, or *of Darrein Preſentment*; *The* ſame *ſhall be obſerved in Advowſons demiſed* for Term of Life of Years, or in Fee-Tail.

For on this Writ the Advowſon ſhall be recovered; But in Quare Impedit nothing ſhall be recovered but the Preſentation or Damages; and if in Quare Impedit brought by the Patron alone, a Writ ſhould be awarded to the Biſhop againſt him, it would not bind the Feme, who is not Party. Br. Quare Impedit, pl. 41. cites 50 E. 3. 13.

6. Aſſiſe of Darrein Preſentment is not maintainable *by the Baron alone, In Jure Uxoris, without naming the Feme with him.* Contrary of Quare Impedit. Br. Darrein Preſentment, pl. 3. cites 14 H. 4. 12.

S P. Jenk. 1. pl. 1. For the Preſentment only is to be recovered. Underſtand that the King may maintain this Writ of any other Church, but *not of a Prebend.* Jenk. 1. pl. 1.

7. The *King* may maintain an Aſſiſe of Darrein Preſentment. F. N. B. 31. (C)

F. N. B. 32 (A) in the Note in the Margin cites 20 E. 2. Dar. Preſentment 11 & 13. but ſays they ſeem to make a *Difference, when the Diſturbance is before the Compoſition* to preſent by Turns, *and when after.*

8. Aſſiſe of Darrein Preſentment doth *not* lie *for one Coparcener againſt the other*, as appeareth M. 20. E. 3. & M. 15. E. 3. pl. 10. F. N. B. 32 (A)

* Both the Tranſlations leave out the Word (Not) but it is in the French Original.

9. If a *Parſon* be *Patron of a Vicarage*, and the *Vicarage voids*, and a *Stranger preſents*, the Parſon ſhall have a Quare Impedit, or Darrein Preſentment; But if the Six Months paſs, he ſhall * [not] have a Writ of Right of Advowſon; becauſe that Writ is given only for him who hath the intire Fee and Right in him, and the Parſon hath not the ſame; For the Right is in the Patron and Ordinary. F. N. B. 49 (K)

(I. d) Aſſiſe of Darrein Preſentment. *Of what Thing.*

1. THIS Writ is all in the Poſſeſſion, and the Preſentment is the Poſſeſſion. 21 E. 4. 2.

2. An Aſſiſe of Darrein Preſentment does not lie *De Prebendis or Eccleſiis Prebendatis*; ita Proviſum eſt coram Rege, Archiepiſcopis, Epiſcopis, Comitibus & Baronibus. Jenk. 1. pl. 1. cites 19 H. 3.

(K. d) *What* will be *ſufficient Seiſin* to maintain it.

Fol. 383.

See (F. d) — (O. d)

1. INſtitution of his Clerk without Induction is ſufficient to maintain this Writ. 38 H. 6. 16. b.

Where the Ordinary, Metropolitan, or King preſents for *Lapſe*, any of theſe Collations will ſerve the Patron for Poſſeſſion in his Aſſiſe of Darrein Preſentment. Godolph. Rep. 643. cap. 44. S. 1.

(K. d. 2) Darrein Preſentment. *Proceedings*, *Pleadings*, and *Judgment*.

1. IN an Aſſiſe of Darrein Preſentment of an Advowſon in Groſs, *Jointenancy* is not a good Plea. By the Judges of both Benches. Jenk. 13. pl. 23. cites 15 E. 3.

2. Where the *King* or the Pope *preſents to my Advowſon without Title*, I ſhall have Aſſiſe of *Darrrein Preſentment againſt the Incumbent alone without naming the King* or the Pope; For Proceſs cannot be made againſt either of them. Br. Darrein Preſentment, pl. 4. cites 3 H. 7. 7.

3. If a Man *preſents* to an Advowſon, and afterwards the *Parſon reſigns or is depoſed*, and the *Patron preſents again*, and is diſturbed, he ſhall have an Aſſiſe of Darrein Preſentment; and the *Form of the Writ* ſhall be *Quis Advocatus tempore Pacis preſentavit ultimam Perſonam, quæ mortua eſt, ad Eccleſiam* &c. although he reſign and be living. And the Form of the Writ is to ſuppoſe, that the Defendant does deforce him of the Advowſon, and yet by his Count he counts, that he or his Anceſtors laſt preſented to the Advowſon, by which he does ſuppoſe that he is in Poſſeſſion of the Advowſon; and yet the ſame is good. F. N. B. 31. (H)

4. If *one Defendant* in a Darrein Preſentment *dies*, the Writ is good by the Survivor againſt the other. F. N. B. 32. (B)

5. If a Diſturber preſent to an Advowſon, and the Patron bring an Aſſiſe of Darrein Preſentment, and *pending the Writ*, the *Incumbent dies*, if the *Diſturber preſents another Incumbent and dies*, yet the Patron ſhall have an Aſſiſe of Darrein Preſentment upon the 1ſt. Diſturbance againſt the Heir of the Diſturber by Journey's Accounts; and *ſo if the Diſturber preſents two or three times within the 6 Months*. the very *Patron ſhall have* an Aſſiſe of *Darrein Preſentment upon the firſt Diſturbance*. F. N. B. 32. (C)

6. A Man ſhall *not tender a* * *Demy-mark againſt the King* to enquire of the Seiſin alleged in the King's Count or Declaration, as he ſhall in Caſe a Common Perſon brings the Writ; neither ſhall a Man have *final Judgment againſt the King*, although it be after the Miſe joined betwixt the King and the Tenant. F. N. B. 31. (D)

* S. P. becauſe Nullum tempus occurrit Regi, and therefore the King ſhall allege that he or his Progenitor was ſeiſed without ſhewing any time. Co. Litt. 294. b.— F. N. B. 31. (D)

7. In Darrein Preſentment it was pleaded in Abatement of the Writ, that the *ſame Plaintiff had brought a Quare Impedit for the ſame Church againſt the ſame Defendants, which Writ was* * *returned, and that they did appear to defend it*. The Court held the Plea good in Abatement of the Writ; For the Quare Impedit is a Writ of a higher Nature, it being for the Right and the Poſſeſſion. And the Statute of W. cap. 5. ſays, It may be in the *Election* of one, whether he will have an Aſſiſe of Darrein Preſentment or Quare Impedit, and therefore he cannot have them both.

Mo. 883. pl. 1239. S. C. Noy 18. S. C. by the Name of the Village of St. Andrews v. Archbiſhop of York and Counteſs of Shrewsbury

both. And the Court awarded, that the Aſſiſe abate. Hutt. 3. 4. Mich. 15 Jac. Andrews v. Hacker.

——Brownl. 27. S. C. by Name of Sir William St. Andrew v. Archbiſhop of York and the Counteſs of Shrewsbury & J. H. —— S. C. Hob 184 pl. 222.——G. Hiſt. of C B. 207. cites S. C.——Watſ. Comp. Inc. 8vo. 435, 436 cites ſame Caſes.

So where Aſſiſe of Darrein Preſentment was taken by *Default againſt the Clerk*, and the other Tenant *pleaded in Abatement* of the Aſſiſe, that there was a *Quare Impedit* depending, the Plea was adjudg'd good. Brownl. 28. Trin 12 Jac. Lovelace v. Lady Spencer.——* Warburton J. cited 10 E. 3. Statham in Darrein Preſentment 3. that it was urg'd by Hank and Hill, that the Quare Impedit was not depending till Defendant had appeared. Hutt. 4. but the Book ſays, Vide 2 E. 4. fol. that it is depending when it is returned.

Watſ. Comp. Inc. 8vo. 493. cap. 26. cites S. C. — Ibid. 530. cap. 28. cites S. C. ——

8. If Darrein Preſentment be brought *in Middleſex*, at the Return of the Writ the *Aſſiſe ſhall be* there *arraigned* by the Serjeants at the Bar *in French, and the Tenant* ſhall be *demanded*, and if the Tenant do not appear, when he is demanded, a *Re-ſummons* ſhall be awarded; and *if upon the Re-ſummons the Tenant ſhall not appear*, the *Aſſiſe ſhall be taken* againſt him *by Default*; and if the Tenant appear, he may demand Oyer of the Writ and the Return, and the Writ ſhall be read to him in hæc Verba, and the Return thereof, and the *Jury ſhall have the View*, and the Tenant may take Exception either to the Writ or to the Return thereof, if there be Cauſe; and if there be no Cauſe, then he may pray a *Day to plead*; and if the Court give a Day, then the Jurors that appeared ſhall be diſcharged of their Attendance, and ought to appear upon a New Proceſs to be awarded againſt them. The *Judgment* in this Aſſiſe *is to recover the* * *Preſentation, Damages, and the Value* for half a Year, and if 6 Months be paſſed, the Value of the Church for 2 Years, by the Statute of Weſtminſter the 2d. and 6 of the Jury ought to have the *View* of the Church, to the Intent that they may put the Plaintiff into Poſſeſſion if he recover; and in this Writ the Plaintiff ſhall not recover the Advowſon but the Preſentation. The *Proceſs* in this Writ *is Summons, Re-ſummons againſt the Tenant, and Summons, Habeas Corpus and Diſtreſs againſt the Jury*, and the Proceſs ſhall be *returned from* 15 Days, *to* 15 *Days*, and *no Eſſoign nor Voucher* lies *after a Re-ſummons*. Brownl. 160.

* S. P. Jenk. 2 pl. 1. cites 5 H. 7. 16.

Jo. 330. Lort v. Biſhop of St. Davids S. C but not S. P.

9. The Declaration in Aſſiſe of Darrein Preſentment was *Quod ipſe Præſentavit*, without ſaying *Ad eandem Eccleſiam*. Upon Error brought it was adjudged well enough; For it cannot have any other *Intendment* than that he preſented to the ſame Church mentioned in the Plaint; And the Words after (*Quod Admiſſus &c. fuit in eadem*) refer to the Church mentioned in the Plaint, and therefore it was held good enough, and ſo affirmed a Judgment given in the Grand Seſſions in Wales. Cro. C. 341. 348. Hill. 9 Car. B. R. Cort v. Biſhop of St. David's, Owen, and Pritchard.

(K. d. 3) *Verdict.* Good, in Darrein Preſentment.

It ſhall be intended, that it was well brought, and that there was no Plenarty before the Writ purchaſed, unleſs it be

1. IN Darrein Preſentment Verdict found the Iſſue for the Plaintiff, and that the *Church was full of P. the Defendant, Per tempus ſemeſtre modo Præteritum*, and ſhewed not When or How long it was void, ſo as it might appear to the Court; and it was objected, that this might be a long time before the Writ brought. But all the Court delivered their Opinions ſeriatim that the Verdict is good, and that it is not neceſſary to find When. But the Jury having found, Quod tempus ſemeſtre Modo tranſivit, the *Modo tranſivit* ſhall be *intended that the* 6 *Months paſſed hanging the Writ*, which is the only Thing inquirable in reſpect of the Da-

Damages. Cro. C. 341. 348. Cort v. Biſhop of St. David, Owen, & Pritchard. pleaded. Jo. 330. Hill. 9 Car. B R. the 5th. Reſolution in S. C. by the Name of Lort v. the Biſhop of St. David.

(L. d) *Right of Advowſon. Of what* Thing.

1. A Right of Advowſon lies of an Appropriation. 44 E. 3. 34. 14 H. 4. 14. b. Contra Com. Grendon 501.

2. The King brought Writ of Right of Advowſon *of the 4th. Part of the Church of St. Dunſtan in L.* The Defendant put himſelf in Inqueſt in lieu of Grand Aſſiſe; Per Pole, upon Grand Aſſiſe Niſi Prius is not grantable; Quod Nota. Br. Droit de recto, pl. 14. cites 24 E. 3. 23. In Right of Advowſon *of the 4th. Part of the Tithes and Offerings of the Church of S. D. in L.* Cand. demanded Judgment of the Writ; For the *Statute of W. 2. gave Tithes only.* Per Thorp, the Chancery may make Writ of Tithes and Offerings *In Conſimili Caſu*, and therefore he awarded the Writ good. Br. Droit de recto, pl. 8. cites 38 E. 3. 13 ——S. P. F. N. B. 30. (G)——*But* one ſhall *not* have a Writ of Right of Advowſon *of the Tithes of a Carve of Land*, becauſe it does not thereby appear, whether it be of the Value of the 4th Part of the Church. F. N. B. 30. (G) in the new Notes there (a) cites 18 E. 2. Brief 825.

3. Writ of Right lies well *of the* * *Moiety of an Advowſon of a Church, or of a 3d or 4th Part* thereof; and yet an Advowſon is entire. Br. Brief, pl. 316. cites 5 H. 7. 7. S. P. Where a Man claims to have Fee Simple in the Advowſon. F. N. B. 30. (G)—— * S. P. Br. Quare Impedit, pl. 10. cites 33 H. 6. 11. — Where *two Advowſons in one Church are conſolidated into one Church*, there each ſhall have Writ of Right De Advocatione Medietatis Eccleſiæ; for now they are two Advowſons, and yet but one Church, where they were two before. Br. Quare Impedit, pl. 10. cites 33 H. 6. 11.

F. N. B. 31. (B) ſays, That in 31 E. 1. it appears, that a Man ſhall have a Writ of Right *De Medietate* Advocationis *where an Advowſon is partible betwixt 2 Coparceners, and one* of them *is diſturbed* by a Stranger.——*But* the Writ of Right De Advocatione Medietatis Eccleſiæ *lay where 2 Coparceners do preſent 2 Parſons to one Advowſon* &c. as there are in ſome Churches 2 Parſons &c. F. N. B. 31. (B)

4. Writ of Right quod reddat Advocationem *of the Tithes of 4 Acres*, or of one Acre, and the like, *was at Common Law*, and therefore the Statute was made, that Writ of Right of Tithes ſhould not be granted of leſs Part than of the 4th Part of the Tithes. And ſo Præcipe quod reddat Advocationem Decimarum quartæ Partis, tertiæ Partis &c. Per Markham. Br. Prohibition, pl. 7. cites 38 H. 6. 19.

5. *A* Writ of Right of Advowſon lieth *de Advocatione Vicariæ, vel* * *Præbendæ vel* † *Capellæ*, and ſuch like, as well as De Advocatione Eccleſiæ. F. N. B. 31. (C) * S. P. Jenk. 1. pl. 1. † A Man ſhall have this Writ *of a Chapel* which is a *Donative*, as well as he ſhall have if it were preſentable to the Ordinary. F. N. B. 31. (E)

(L. d. 2) Writ of Right of Advowſon. *By or againſt whom* it lies.

1. WHERE a *Partition* is made *between Parceners to preſent by Turn*, they are all Tenants thereof, and Writ of Right of Advowſon ſhall be brought againſt all. Br. Quare Impedit, pl. 73. cites 21 E. 3. 30, 31.

2. *Tenant in Tail* cannot have Writ of Right. Br. Quare Impedit, pl. 31. cites 43 E. 3. 24.

Br. Quare Impedit, pl. 114. cites S. C. * S.P. Br. Quare Impedit, pl. 111. cites 38 H. 6. 20. — S. P. Br. Prohibition, pl. 7. cites 38 H. 6. 19. Per Danby, Davers, and Moyle; but Yelverton Contra ——— S. P. But Brooke ſays, *Quære inde*; for the contrary was held in the Exchequer-Chamber by Yelverton and Forteſcue, That a † Parſon Imparſonee ſhall have Writ of Right, and ſhall allege Eſplees ſpecially by their Hands. Br. Droit de Recto, pl. 22. cites 39 H. 6. 20, 21. —— † S. P. Br. Spoliation, pl. 4. cites 38 H. 6. 19. that he may have it as Patron. Per Yelverton.

3. Where *a Prior was Parſon Imparſonee*, and *J. N. preſented his Clerk to the ſame Church*, who was admitted, *inſtituted and inducted*, yet by this the Prior is not out out of Poſſeſſion; for *he * cannot have Writ of Right nor Quare Impedit*; for he is in Poſſeſſion, and ſo he *ſhall have no Action unleſs Treſpaſs or Spoliation in the Spiritual Court*, becauſe the Church is adjudged always full of him. Per Priſot. Br. Preſentation, pl. 36. cites 39 H. 6. 20.

Ibid pl. 134. cites 16 E. 4. 11. — Br. Judgment, pl 51. cites 39 H. 6. 23.

4. Writ of Right of Right of Advowſon lies *againſt the Patron only* Br. Quare Impedit, pl. 6. cites 9 H. 6. 30.

But if a Man have an Advowſon *to him and the Heirs of his Body begotten*, and for Default of ſuch Iſſue &c. the *Remainder to him and his Heirs in Fee Simple*; if he be diſturbed, he ſhall not have this Writ, but a Quare Impedit, becauſe he hath not Title to the Advowſon but in Tail, which is in Poſſeſſion; for the Fee Simple is not properly in Poſſeſſion during the Eſtate Tail, and he ought to maintain the Action by that Title that he claimeth the Poſſeſſion of the Advowſon by, and that is of an Eſtate in Tail. F. N. B. 30. (B)

5. A Writ of Right of Advowſon *lies only for him who has* an *Eſtate in* the Advowſon to him and his Heirs in *Fee Simple, or Right of Eſtate to him and his Heirs in Fee Simple* in the Advowſon; and if he be diſturbed to preſent, then he ſhall have the Writ. F. N. B. 30. (B)

And therefore by Thorp, If a Clerk be inſtituted but not inducted, he ſhall not have this Writ of Right of Advowſon. F. N. B. 30. (B) in the new Notes there (b) cites 38 E. 3. 9. a.

6. Where *one uſurps upon Leſſee for Years*, by this the Uſurper has the Fee, and againſt him the Writ of Right lies, and that deſcends to his Heirs. Hutt 66. The firſt Reſolution in the Caſe of Rudd v. the Biſhop of Lincoln.

(M. d) Right of Advowſon. In what Caſes a *Seiſin* is *neceſſary*.

* S.P. Watſ. Comp. Inc. 8vo. 241. cap. 13. † S.P. Jo. 49. in the Caſe of Dalton v. the Biſhop of Ely.

1. EVERY one muſt * count of ſome Seiſin. If † Purchaſor ſuffers an Uſurpation, and ſuffers 6 Months to paſs, he is without Remedy perpetually (for he cannot count of any Seiſin) Co. 10. 134. b. 43 E. 3. 15. 1 H. 4. 2. b. 43 Aſſ. 21. Per Thorpe.

Watſ. Comp. Inc. 8vo. 242. cap. 13. cites Same Caſes.

2. If Purchaſor in Tail ſuffers an Uſurpation before Preſentment, he is without Remedy during his Life. 43 E. 3. 15. Adjudg'd. (and by the Common Law the Iſſue for ever before the Statute of W. 2)

S. P. Otherwiſe the Writ does not lie. F. N. B. 30. (B)

3. He ought to ſhew Poſſeſſion in him or his Anceſtors. 21 E. 4. 1 1 H. 4. 2. 21 E. 3. 27. b.

Br. Quare Impedit, pl. 40. cites S.C.

4. Where the *King has Title to an Advowſon by Alienation in Mortmain*, he cannot have Writ of Right where Preſentation is got after, becauſe this *is upon other Poſſeſſion*, and alſo *he has no Right but only a Title*; and therefore ſhall have Quare Impedit, which is in the Poſſeſſion, after di-

vers

vers Preſentments within the Year; quod nota; Br. Droit de Recto, pl. 5. cites 47 E. 3. 11.

(N. d) *In whom* it is to be alleged. *Seiſin.*

1. IF an Advowſon be given in Frankalmoigne before Limitation to a Religious Houſe, which is after diſſolved, and after the Church voids, the Poſſeſſion of the Houſe is not ſufficient for the Founder. 21 E. 4. 1, 2. b.

2. If the Lord claims to have an Advowſon alien'd in Mortmain by his Tenant, a Seiſin in the Tenant is not ſufficient to maintain this Writ, becauſe this is not any Seiſin in him or his Anceſtors. 21 E. 3. 27. b. Watſ. Comp. Inc. 8vo. 242. cap. 13. cites S. C. —— Ibid. 212. cap. 13. cites S. C.

By whom.

3. Taking of Eſplees by the Incumbent is ſufficient for the Patron. 21 E. 4. 1. b. F. N. B. 30. (B)

(O. d) Right of Advowſon. *What Seiſin* ſhall be *ſufficient.* See (F. d) (K. d)

1. ADdmiſſion and Inſtitution of his Clerk without Induction, doth not ſuffice to maintain this Writ, becauſe in this Writ he ought to allege Eſplees in his Clerk, as in Perception of great Tithes, and this he cannot do without Induction; for before Induction he has no Eſtate in the Glebe. 38 E. 3. 9. Com. *Hare and Bickley* 528. Quære 38 H. 6. 17. Watſ. Comp. Inc. 8vo. 241. cap. 13. cites S. C — S. P. Br. Seiſin, pl. 19. cites 38 E. 3. 4.—

S. P. Br. Droit de Recto, pl. 1. cites 26 H. 8. 3.——S. P. Br. Quare Impedit, pl. 1. cites 22 H. 6. 27. ——S. P. F. N. B. 30. (B)

2. A Seiſin before Time of Memory is not ſufficient to maintain this Writ. 21 E. 4. 1. 2. b. admitted. Fol. 384.

3. If a Man has once preſented and his Clerk inducted, if there are after diverſe Uſurpations, yet this Preſentment is ſufficient to maintain this Writ. 43 E. 3. 15. Watſ Comp. Inc. 8vo. 241. cap. 13. cites Same Caſes.

(O. d 2) Right of Advowſon. *Proceedings* and *Pleadings.* And *what ſhall abate the Writ.* See (M. d) pl. 1, 3.

1. QUARE Impedit was awarded good, notwithſtanding an *Omiſſion of a Meſne in the Conveyance*; Contra in Writ of Right; and it may be that he in whom Omiſſion is alleg'd, was never ſeiſed; and therefore the Writ awarded good. Br. Quare Impedit, pl. 32. cites 44 E. 3. 21.

2. In Writ of Right of Advowſon, the Tenant ſhall come and make Defence, and may join the Miſe by Battel, or Grand Aſſiſe &c. F. N. B. 30. (C.)

2. If

3. If *two bring Writ of Right of Advowſon, or if* it be brought *againſt two*, and the *one dies* of the one Part or the other, the Writ ſhall abate. Contra in a Quare Impedit; for there after Title made, the Defendant is become Actor, and he may recover Damages againſt the Plaintiff. Br. Quare Impedit, pl. 6. cites 9 H. 6. 30.

In this Writ the *Summons ſhall be* made *on the Glebe*, and the Glebe ſhall be taken into the King's Hands at the Grand Cape. F. N. B. 30. (B.) in the new Notes there (c) cites 11 H. 6. 3. 4.

4. In Writ of Right of Advowſon, the *Sheriff may ſummon the Defendant in the Church.* Per Danby & Cott. Br. Quare Impedit, pl. 152. cites 11 H. 6. 3.

5. In Writ of Right of Advowſon, it is ſufficient to plead *Recovery, without alleging Preſentment.* Per Priſot. Br. Judgment, pl. 51. cites 39 H. 6. 23.

Br. Droit de Recto, pl. 27. cites S. C.—— Br. Abridgment, pl. 33. cites S. C.

6. In Right of Advowſon the *Tenant ſaid that the Demandant was ſeiſed of the ſixth Part of the Advowſon at the Time of the Writ purchas'd.* Et per tot. Cur. It ſhall abate the whole Writ; for the Advowſon is intire, and not ſeverable, and he *cannot abridge his Demand, nor* he cannot *recover the entire, according to his Demand*; and therefore he ought to have brought his Writ of 5 Parts. Br. Brief, pl. 316. cites 5 H. 7. 7.

(P. d) *Jure* * *Patronatus.* What. [*In General.*]

* Patron by the Canon Law, as alſo in the Feuds, (wherewith our Common Law doth herein accord) doth ſignify *a Perſon who hath*

1. IF one Man preſents **his Clerk to the Biſhop** within the 6 Months, † and another alſo preſents his Clerk; **in this Caſe the Church is Litigious, and the Biſhop may award this Writ of Jure Patronatus to inquire to whom the Right belongs.**

of Right in him *the free Donation* or Gift *of a Benefice, grounded* originally *upon the Bounty* and Beneficence *of ſuch as Founded*, Erected or Endowed *Churches* with a conſiderable Part of their Revenue. Godolph. Rep 178. cap. 16. S. 1.

When the Ordinary inquires De Jure Patronatus, he makes Commiſſion to his Clerk to do it. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12. &c.——The Jure Patronatus is only for the Excuſe of the Biſhop. Br. Quare Impedit, pl. 12.

† If *two Patrons, each pretending a Right* or Title to the Preſentation, ſhall *preſent one and the ſame Perſon ſeverally* to the Biſhop, to be Admitted and Inſtituted to the Church, the *Biſhop* cannot admit him generally, *but* muſt in his Admittance of the Incumbent *admit him Incumbent of the Preſentation only of one of them*; and if they make ſuch ſeveral Preſentations, claiming by ſeveral Titles, the Biſhop is to direct his Writ De Jure Patronatus, for that in ſuch Caſe the Church is become * Litigious, yet the Biſhop is not to award the ſaid Writ but at the Inſtance and Requeſt of the ſaid Parties. Godolph. Rep. 180 cap. 16. S. 3 ——S. P. Watſ. Comp. Inc. 8vo. 405. cap. 20. cites Parſons Law. 100. cap. 13.————* Br. Quare Impedit, pl. 8. cites 21 H. 6. 44. S. P.

Where two Patrons preſent, the Biſhop is wont to *decree a Proceſs* commonly called *Negotium De Jure Patronatus*, (that is) a *Day fixed* and certain is appointed by the Biſhop to ſit in the Church that is void, and a *Monition decreed* to be ſerved on the Patrons preſenting, and the Clerks preſented, then and there to be preſent to ſee Proceedings in the ſaid Buſineſs according to Law, to which End a *Citation iſſues to 12 Perſons*, whereof *6 of the Clergy and 6 of the Laity*, all *of the Neighbourhood* of the ſaid vacant Church, to be then and there alſo preſent *by Way of an Inqueſt*, and on their Corporal Oaths, to inquire on certain Articles then miniſtred to them, touching the Right of Preſentation to the ſaid Benefice. Theſe *Articles conſiſt chiefly of* theſe four Heads, viz (1.) *Who laſt preſented* to the ſaid Church when it was laſt void, as alſo for the laſt two or three Times when it was void. (2) *Whether the Perſon or* Perſons *who laſt preſented*, or theſe laſt two or three Times or Turns, at the Time and Times of Vacancy of the ſaid Church, *did preſent in his* or their own *proper Right* and Title. (3) *Whether either of the Clerks now preſented be* known or *ſuſpected of any Notorious Crime*, or of Hereſy, Simony, Perjury, Adultery, or Drunkenneſs. (4) *Whether either* of the Clerks now preſented, *hath* given or *promiſed*, either by himſelf, or any other, for him and in his Name, or by or with his Conſent or Knowledge, *any* Money or other *Gratuity* directly or indirectly, *for obtaining of his Preſentation* to the ſaid Benefice to the Patron thereof, or to any other who preſented the ſaid Clerk,

2. **This Writ** iſſues out of the Chancery of the Ordinary. 34 H. 6. 39. b. **Per Moyle.**

Clerk, or cauſed him to be preſented. On which Articles, if it be found by the Verdict of the ſaid Jury, that ſuch or ſuch of the ſaid Patrons was in the Poſſeſſion of the Preſentation at that Time, when the Church was laſt void, then is his Clerk to be admitted, if there be no other legal Impediment to hinder it, that is, nothing to affect him with, contained in the 3d or 4th laſt precedent Articles. Godolph. Rep 179. 180. cap. 16. Sect. 2.——S. P. Watſ. Comp. Inc. 8vo. 422. cap. 22.——S. P. Mal. Qua. Imp. 169. cites Gibſ. Cod. 816. And ſays further, that the Jure Patronatus being awarded, is *to be executed according to the Forms of proceeding in the Eccleſiaſtical Courts*; That the *Biſhop*, if he pleaſes, *may ſit himſelf as Judge*; but that the uſual Way is by Commiſſion iſſued to his Chancellor, or to ſuch other Perſon or Perſons as he ſhall judge proper; That a *general Citation of all Oppoſers* be alſo affixed to the Door of the vacant Church in Time of Divine Service; That there ſhall be a Citation of a Jury of 6 Clergymen and 6 Laymen of the Neighbourhood, or of as many more as the Biſhop pleaſes, the Proportion being obſerved of Clergy and Laity, that there be as many of one Sort as the other; And theſe are bound to appear under Pain of Spiritual Cenſures, the Clergy of Sequeſtration, and the Laity of Excommunication; and if there be 6 of each, the reſt are pronounced Contumacious, and the Court proceeds. That the Clergy and Laity, who are of the Jury, *be ſworn to make Faithful Enquiry*, viz. 1ſt. A Clerk, and then a Layman; The *Articles* or Heads *of Enquiry are to be delivered to them*, As, [beſides others mentioned above] Whether the Church became vacant, and if vacant, how it became ſo? Who hath the Inheritance of the Advowſon? Who ought to preſent to the vacant Turn? With ſuch other Circumſtances as the Biſhop ſhall ſee Cauſe to inquire into; That the *Parties* or their Counſel *do ſet forth their Title*, and produce their Evidences; and that the *Verdict be given*, either *the ſame Day, or at ſuch Time* and Place *as the Judge ſhall aſſign.*

3. **The Biſhop** ought to make this Inquiſition at his Peril. 34 H. 6. 11. b. **Per Priſot.**

4. **This Writ ſhall be ſued** at the Coſt of the Ordinary; **becauſe it is for his Excuſe, and for his Eaſe.** 5 H. 7. 22. **Per Brian; but Keble contra.**

5. Contra 34 H. 6. **Per Danby and 2 Doctors.** 35 H. 6. 19. **Per Priſot.**

6. **But it ſeems** contra, **becauſe the Ordinary is** not bound to award **a Commiſſion to inquire De Jure Patronatus Ex Officio, but at the Prayer of the Parties.** 8 E. 4. 24. b. **Per Curiam.** 5 H. 7. 20. b. **Per Keble.** 22 H. 6. 30. **Per Mark.**

7. For **when the Church is Litigious,** he may ſuffer the Lapſe **to incur** without Inquiry. 34 H. 8. 41 **Curia.** 35 H. 6. 18. b. **And if he ſhall be compell'd to award it Ex Officio, then he ſhall never have any Lapſe.** 35 H. 6. 19. **And by** 34 H. 6. 38. **it ſhall be** at the Coſts of the Parties; **becauſe the Ordinary is Judge in this Caſe.**

Br. Nugation, pl. 3. cites 33 H. 6. 13. That in Quare Impedit the Biſhop pleaded, that the Law of Holy Church is, that where the Church is Litigious, by different Clerks being preſented to him by Contending Patrons, that the Ordinary is not bound to preſent any Clerk till he has awarded a Commiſſion to inquire of the Right of Patronage, and this at the Coſts of ſome of the Patrons or their Clerks, and that if ſix Months paſs they may make *Collation by Lapſe*. And per Cur. It ſuffices to ſay that the Church was Litigious, and ſhew how, as above, and that the 6 Months paſs'd, and he made Collation by Lapſe, Judgment &c. without ſhewing the other Matter above; for it is a good Replication for the Plaintiff to ſay that he required him to inquire De Jure Patronatus, and he refuſed; for then he is Diſturber, and ſo his Plea good, and the other Matter is only Surpluſage; for it is only to excuſe the Biſhop when he is thereof accuſed. Nota, Per Judicium—It was agreed that the Jure Patronatus *ſhall be ſued at the Coſts of the Party or his Clerk*, and the Biſhop is not bound to be at the Coſts, for he is Judge in this Caſe; but where the Court writes to the Biſhop to certify Baſtardy or Matrimony, or the like, there he ſhall do it at his own Coſts; for there he is a Miniſter. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12 & 32. 34 H. 6. 11. 38 & 35 H. 6. 18.—S. P. Br. Coſts, pl. 2. cites 34 H. 6. 38.

8. **If the Ordinary** be required **when the Church is Litigious,** to award **a Jure Patronatus, he ought to award it, otherwiſe he is a Diſturber.** 34 H. 6. 40. **Per two.**

Br. Nugation, pl. 3. cites 33 H. 6. 13.——Br. Quare Impedit, pl. 12. cites 34 H. 6. 11. 38. and 35 H. 6. 18.——Watſ. Comp. Inc. 8vo 191. cap. 12. cites 34 H. 6. 40.

9. 22 H. 6. 30. **It is ſaid that the Party, at whoſe Suit this Writ is awarded,** ſhall name the Commiſſioners; **but there the Judges ſay that is marvellous that he ſhall aſſign his Judges.**

10. If one only preſents, **yet the Biſhop may award a Jure Patronatus.** 21 H. 6. 44. 34 H. 6. 40.

See the Notes on pl. 2. S. P. Per Hobart Ch. J. That tho'

but one preſents, yet *if the Biſhop makes Doubt of his Title*, as in many Caſes he may juſtly, being a Stranger to it, he may require Satisfaction by Jure Patronatus; For, a Notatione Nominis, it doth not imply diverſe Parties, as a Juris Utrum doth, but is like a Quo Jure. And therefore take the Caſe to be, that a Parſon is deprived by the Ordinary, or reads not his Articles, in which Caſes the Church is void, and yet Notice muſt be given to the very Patron for that Time, or elſe the Lapſe incurs not (which is inconvenient for the Church, and a Prejudice to the Ordinary) how ſhall he now aſſure himſelf of a ſufficient Notice? for if he give Notice to him that is not Patron for this very Turn, his Notice is vain, and the Patron perhaps knows not of the Deprivation, or if he knows it, needs not preſent without Notice given him. I hold, in this Caſe, his Way is to award a Jure Patronatus, with ſolemn Premonitions quorum Intereſt, and then Inquiry being made who is Patron, then to give him Notice; and if he preſents not within 6 Months, then the Ordinary may collate, though that ſhall not bind the very Patron; yet it ſhall excuſe from Diſturbance upon ſpecial Matter ſhewed. Hob. 318. pl. 391. in Caſe of Elvis v. Archbiſhop of York.

11. **If one only preſents, a Jure Patronatus may be awarded.** 21 H. 6. 44.

If 2 *preſent ſeverally*, there 2 *Commiſſions* De Jure Patronatus *ſhall be awarded*; And if the *one be found Patron by the one and the other, by the other*, there the Church is litigious. And if their Titles are *not diſcuſſed with in the 6 Months*, the Biſhop may *preſent by Lapſe*. Br. Quare Impedit. pl. 80, cites 21. H 6. 44. —— Wats. Com. Inc. 8vo. 406 cap. 20. cites S. C. But adds, That Sir Simon Degg makes a Quære whether the Biſhop in this Caſe may let the Church lapſe, and ſo collate? Or whether he be not bound to admit one of the Clerks at his Election? and cites Parſons Counſellor 14.

12. But if 2 preſent, **there** ought to be awarded 2 **Jure Patronatus's.** 21 H. 6. 44.

Jus Patronatus *binds* not the true Patron in his *Quare Impedit*, but is final even to the true Patron ſo far that he cannot impute Diſturbance to the Ordinary following that Verdict. Hob. 317. Elvis v. Archbp. of York & al.--Watſ. Comp. Inc. 8vo. 419. cap. 21. cites ſame Caſes.

13. **If the** Ordinary admits the Clerk of him, for whom the Right is found **upon this Writ, this ſhall excuſe the Ordinary; For he ſhall not be a** Diſturber, **tho' the Right in a Quare Impedit be after found for the other.** 34 H. 6. 11. b. **Per Priſot.** 34 H. 6. 38.

Watſ. Comp. Inc 8vo. 419. cap 21. cites S. C.

14. And **if the** Commiſſioners certify otherwiſe than is found **before them, yet if the Ordinary** does according to the Certificate **he is excuſed** 22 H. 6. 30. **Per Newton; For the Iſſue is between the Ordinary and Patron, which was the Certificate of the Commiſſioners.**

* Fol. 385.

15. But **if the Right be** found for the Patron upon this Writ, and the Ordinary after admits the Clerk of the other **Patron, it ſhall be at his Peril; For** * **he may well enough admit him, notwithſtanding the Commiſſion, and finding for the other.** 34 H. 6. 11. b. **For it ſeems that it is but for his better Information; But ſee** 22 H. 6. 30. **where the Ordinary alleges a certain Certificate by the Commiſſioners for a Patron, and the Plaintiff in a Quare Impedit, before the Right tried in it, traverſes that the Commiſſioners did not certify the Right for the other Patron.** 34 H. 6. 41.

S. P. Br. Quare Impedit. pl. 12. cites 33 H. 6. 12, & 32. 34 H. 6. 11. 38. & 35 H. 6. 18. per Priſot.

16. But **when the Right in this Writ is found for one Patron, and the Ordinary admits the Clerk of the other Patron, if it be after** found in Quare Impedit, that the Right appertains to the Patron for whom it was found in the Jure Patronatus, **he ſhall be a Diſturber.** 34 H. 6. 11. **b. by Priſott.**

—And though the Biſhop in going againſt the Verdict Chances to admit the Clerk of the true Patron, yet this will not excuſe him from Diſturbance in Quare Impedit by the Perſon for whom the Verdict was found; For it is no Plea to ſay that he admitted the true Patron's Clerk. Watſ Comp. Inc. 8vo. 419, 420. cap. 21.

* The Ordinary is bound to admit the Clerk of him that is found Patron

17. Otherwiſe **it is where it is** found for him who is preſented, **Quære whether the Ordinary may ſuffer Lapſe to incur after it is found for one in this Writ. It ſeems that he cannot; For** 35 H. 6. 19. **by Priſot he ſhall not have any** Lapſe after it is found for one; **For he is** * **bound to admit his Clerk.** 21 H. 6. 44, 45.

18. If

by the Inquiſition de Jure Patronatus, *if he preſents after the Verdict*, whether he preſented before the Commiſſion or not. Br. Quare Impedit. pl. 80. cites 21 H. 8 44. per Newton, Paſton, and others.——— Watſ. Comp. Inc. 8vo. 405. cap. 20.

18. **If it be** found **in this Writ for one Patron, the Ordinary is not bound to admit his Clerk without a** New Requeſt **made** by the Clerk, **and it needs not for the Patron to make a New Requeſt or Preſentation.** 34 H. 6. 12. **Per Curiam.**

Watſ. Comp. Inc. 8vo. 191. cap. 12. cites S. C —— S. P. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12. & 32. 34 H. 6. 11. & 38. 35 H. 6. 18. —— In ſuch Caſe the Ordinary is not bound to admit ſuch Patron's Clerk if he does not preſent him, and labour to have him admitted. Br. Quare Impedit pl 80. cites 21 H. 6. 44. Per Newton, Paſton, and other Juſtices.

19. **If a** Diſturber preſents without any other, **the Biſhop may inquire by the Writ.** 34 H. 6. 40.

20. But **if in the ſaid Caſe it be** found that another Stranger has Right, if this Stranger preſents within the 6 Months, **the Ordinary is obliged to admit his Clerk; But if he does not preſent within the 6 Months, then the Ordinary is obliged to** admit **the Clerk of the Diſturber.** 34 H. 6. 40.

Watſ. Comp. Inc. 8vo. 421, 422. cap. 21. cites S. C. —— S. P. Br. Quare Impedit. pl. 12 cites 33 H. 6. 12. & 32. 34 H. 6. 11. 38. & 35 H. 6. 18. per Priſot.

(P. d. 2) *Ne Admittas.* Lies for whom, when, and in what Caſes.

1. WHERE one hath an *Action* of Darrein Preſentment, or of Quare Impedit, *depending* in the Common Pleas and he ſuppoſes that the Biſhop will admit the Clerk of the Defendant pendant the Plea betwixt them; He may ſue a Ne admittas, directed to the Biſhop. F.N.B. 37 (F)

The Courſe to ſtop Strangers from preſenting *Pendente Brevi* is, after the Quare Impedit is depending, to ſue a *Ne Admittas* to the Biſhop, and if the Biſhop then admits the Clerk of any other pending that Suit, and the Plaintiff recovers, he ſhall have a *Quare Incumbravit*, and thereby remove any that comes in hanging the Writ by whatſoever Title he comes in, and ſhall force him, who hath Right, to recover by Quare Impedit; But if he ſues not ſuch Writ, if then the *Incumbent of a Stranger ſhould come in by good Title Pendente Brevi*, he ſhall bar him in *Scire Facias*. and ſhall hold him out. Per Popham Ch. J. Cro. J. 93. Mich. 3 Jac. B. R. in the Caſe of Lancaſter v. Lowe. —Watſ. Comp. Inc. 8vo. 428, 429. cap. 22.

2. This Writ of Ne admittas lieth *for the Plaintiff* in a Quare Impedit. F. N. B. 37. (F)

S. P. But not *till the Writ of Quare Impedit be returned*, and not Meſne between the Teſte and the Return in Bank; For no Plea is pending. Br. Quare Impedit, pl. 124. cites 2 E. 4. 11. Per Moile. J. ——— Watſ. Comp. Inc. 8vo. 428. cap. 28. cites S. C.

It ſeemeth that the *Defendant may ſuet his Writ* as well as the Plaintiff, if the Defendant do ſuppoſe that the Biſhop will admit the Clerk of the Plaintiff pendant the Writ. F. N. B. 37. (H)

3. Ne Admittas ought to be *ſued within the 6 Months after the Avoidance*; for after the 6 Months he ſhall not have this Writ, becauſe then the Biſhop may preſent for Lapſe; And therefore it is in vain then for to ſue this Writ, becauſe the Title to preſent is then devolved unto the Biſhop; But the *King may ſue this Writ after* the 6 Months, where he hath a Quare Impedit depending, or Aſſize de Darrein Preſentment, becauſe that Nullum occurrit Regi; But there is a Rule in the Regiſter, thus, Notandum eſt, quando Rex præſentat ut in Jure Coronæ, tunc incurrit ei Tempus. But this is not Law at this Day. F. N. B. 37 (F)

Watſ Comp. Inc. 8vo. 428. cap. 28. cites S. C. & Regiſt. Orig. 31. b.

4. Ne

* S. P. Watſ. Comp. Inc. 8vo. 428. cap 22. cites S. C.

4. Ne Admittas does not lie, if the *Plea* be *not depending in the King's Court* by Quare Impedit, or Aſſiſe of Darrein Preſentment; And therefore there is a * Writ in the Regiſter directed into the Chief Juſtice of the Common Pleas, to certify the King in the Chancery, if there be any Pleas depending before him and his Companions by Writ betwixt ſuch and ſuch Perſons &c. and therefore it ſeemeth the Writ of *Ne Admittas* ſhall *not* be *granted before the King be certified in the Chancery, that ſuch Pleas of Quare Impedit or Darrein Preſentment be there depending in the Common Pleas*; *But* yet the Writ of Ne Admittas *may be granted* out of the Chancery *directed unto the Biſhop, that he do not admit &c. before the King be certified in the Chancery*, that ſuch Plea of Quare Impedit, or Darrein Preſentment is depending in the Common Pleas, and then the Party grieved may require the Ch. J. to certify the King in his Chancery, that no ſuch Plea is depending there, and thereupon the Party grieved ſhall have ſuch Writ. F. N. B. 37 (H)

* Writ to the Biſhop to admit a Clerk is a Judicial Latitat. 12 Rep. 59. cites Dyer.

(Q. d) * *Writ to the Biſhop. At what Time* it ſhall be *granted.*

Watſ. Comp. Inc. 8vo. 524. cap. 27. cites S. C that the Plaintiff ſhall not have Writ to the Biſhop until and unleſs it be alſo adjudged againſt the Patron

1. IN a Quare Impedit againſt the Patron and Incumbent, if a Writ to the Biſhop be adjudged againſt the Incumbent upon his Plea, yet Writ ſhall not iſſue till the Plea between the Plaintiff and Patron be determined. 25 E. 3. 34. b. adjudged twice.

Watſ Comp. Inc. 8vo 525. cap. 27. cites S. C.—If two Defendants plead *ſeveral Bars* in Quare Impedit, and the one is found againſt the Plaintiff, and the other with the Plaintiff, the Plaintiff ſhall not have any Writ to the Biſhop. Tho' the Plea of one be tried firſt, and found for the Plaintiff, no Writ to the Biſhop ſhall be awarded till after the other Iſſue be tried. Jenk 95. pl. 85.——Watſ Comp Inc. 8vo. 525. cap. 27. cites S. C.

2. In Quare Impedit againſt two, if Judgment be given againſt the one upon Nient Dedire, no Writ to the Biſhop ſhall be granted againſt the other, till the Plea of the other be determined; for he may foreclose him of the Writ. 17 E. 3. 58.

3. If the King recovers in Quare Impedit againſt J. S. by Nient Dedire, having another Quare Impedit pending at the ſame Time againſt the ſaid J. S. and W. N. he ſhall have Writ to the Biſhop immediately, againſt J. S. upon the Recovery before the Plea in the other Writ determined, becauſe thoſe are ſeveral Originals. 17 E. 3. 58.

Watſ. Comp. Inc. 8vo. 525. cap. 27. cites S. C.

4. But if the King recovers againſt an Incumbent of a Provendary, becauſe he claims of the Collation of the Biſhop of the Dioceſs, yet if the King has another Quare Impedit againſt the Biſhop alone of the ſame Provendary, no Writ to the Biſhop ſhall be granted againſt the Incumbent till the Plea be determined between him and the Biſhop, tho' thoſe are ſeveral Originals. 25 E. 3. 47. adjudged.

5. *Before Writ iſſues to the Biſhop, Writ ſhall be awarded to the Biſhop to inquire if the Church be void, and* alſo of the *Value of the Church, and if the* 6 *Months were paſs'd*, or not. Br. Quare Impedit, pl. 49. cites 7 H. 4. 34. 36.

Quare Impedit *againſt* 3, the *Plaintiff recovered by Default againſt the one*; and Judgment was that he have Writ to the Biſhop and Damages for half a Year, Et ceſſet Executio till it be tried againſt the other Defendant; for otherwiſe this Execution againſt the one alone ſhall abate

6. In Quare Impedit *againſt* 2, *Proceſs continued to the Diſtreſs* at which Day the *one appeared*, and the *other made Default*, and Writ to the Biſhop was awarded againſt the one, and the other compell'd to anſwer by the Opinion of the Court. Br. Quare Impedit, pl. 89. cites 14 H. 7. 19.

abate the Writ againſt the others; for he cannot recover the Preſentation againſt the others, when he has the Preſentation by the firſt Judgment; As in Treſpaſs againſt two, and it is found againſt the one, and he takes Execution againſt him, the Writ ſhall abate againſt the other. Br. Quare Impedit, pl. 137 cites 20 E. 4. 1. and 10 E. 4. 11. 13.

7. A Man *ſued divers Quare Impedits* againſt the Biſhop, and he was *Non-ſuit in all but one* Writ; the Defendant had not a Writ to the Biſhop until that Writ was determined. F. N. B. 38. (R)

S. P. Watſ. Comp. Inc. 8vo. 520. cap 27. cites 12 R. 2. Brief al Eveſque 16.

8. A. recover'd in a Quare Impedit againſt B. and C. and had Judgment to have a Writ to the Biſhop. And a Writ of Enquiry of Damages iſſued. Now the Defendants brought Error. And by the Court that Writ ſhall abate, becauſe Judgment is not given upon the intire Record, and that a Writ to the Biſhop ſhall not iſſue *till the Writ of Enquiry of the Value be return'd*, unleſs the Plaintiff releaſe the Damages; And that by the Court and all the Clerks. Noy 66. Mich. 39. 40 Eliz. C. B. The Biſhop of Glouceſter & al. v. Veal.

Watſ. Comp. Inc. 8vo. 526. cap. 27. cites S. C.

(R. d) Writ to the Biſhop. *What Court may award it.*

Fol. 386.

1. THEY who hold Plea in a Franchiſe, **cannot award a Writ to the Biſhop.** 11 H. 6. 3.

2. In Wales **a Writ cannot be awarded to the Biſhop** by the Juſtices there. 11 H. 6. 3.

A Writ was awarded to the Archbiſhop of Canterbury, becauſe the Biſhop of St. Davids was Party; and it was aſſigned for Error for that the Juſtices of the *Grand Seſſions* have no Power to write to him, they having no Power to puniſh him if he does not obey. And the Court doubted of that Point; but it ſeems prima facie, that they well may write to him; for it *is now a Court of the King's*, and a Quare non Admiſit lies, if he does not admit. But when they were the Marches in Wales, they had no ſuch Power; and for that Reaſon a Quare Impedit did lie in the adjoining Counties, but not ſo at this Day. But they would adviſe. Cro. C. 342. Cort v. Bp of St. David's, Owen and Pritchard.——Watſ. Comp. Inc. 8vo. 549. cap. 28. cites S. C.——Jo. 332. S. C. Judgment was affirm'd. Per tot. Cur.—Sid. 92. at the End of Winn's Caſe, the Reporter ſays it ſeems that the Grand Seſſions of North Wales cannot write to the Biſhop; and that this is the Reaſon that Quare Impedit does not lie there.——

(S. d) Writ to the Biſhop. *Who ſhall have it.*

1. IN Quare Impedit the Defendant **ſhall have Writ to the Biſhop,** if it be found for him; **for he is Actor as well as the other.** 9 H. 6. 31. 18 E. 3. 15. b.

S. P. Watſ. Comp. Inc. 8vo. 505. cap. 26.

2. **In a Quare Impedit, if the** Defendant makes Title to himſelf and a Stranger **to the Church, and after the** Plaintiff is Nonſuited, **yet the Writ to the Biſhop ſhall be awarded only for the Defendant, and not for the Stranger alſo, becauſe he is** not nam'd in the Writ. 13 E. 3. Brief al Eveſque 20. 25.

Watſ. Comp. Inc. 8vo. 520. cap. 27. cites S. C.—— S. P. F. N. B. 39. (A) and there in the new Notes (a) cites S. C. And ſays, See alſo for this 11 H. 6. 8. where A. B. and C. Parceners brought a Quare Impedit againſt C. who ſever'd, and afterwards A. and B. were Nonſuited; C. ſhall not have a Writ to the Biſhop without Title ſhewn, and yet on the Title ſhewn the Title would appear for the Plaintiff. See 13 E. 3. pl. 20 & 25.

3. *Baron and Feme brought Quare Impedit*, and the *Feme died pending the Writ*, yet the Writ remained good, and the Baron had Writ to the

Biſhop *as Tenant by the Curteſy.* Br. Quare Impedit, pl. 67. cites 38 E. 3. 35.

Br. Brief, pl. 158. cites 7 H. 6. 34. S. C.

4. The *Incumbent* ſhall not have a Writ to the Biſhop where his *Plea* is *found* for him, if the *Patron makes Default*, and will not plead. Br. Encumbent, pl. 9. cites 7 H. 6. 36.

(T. d) Writ to the Biſhop for a third Perſon not Party. *In what Caſes* the Writ ſhall be awarded *for a third Perſon not Party* to the Writ.

Watſ. Comp. Inc. 8vo. 528. cap. 27. ——S. P. F. N. B. 31. (F) in the

1. IN an Aſſiſe of Darrein Preſentment **between two Men, if [it be] found that neither the one nor the other has Right to preſent but a 3d Perſon not Party to the Writ, the Writ ſhall be awarded for him.** 17 E. 3. 23. **Wilby ſaid that it had been ſo ſeen.**

Note in the Marg. cites 7 E. 2. Darrein Preſentment 26 E. 3. 41 And adds, That therefore one cannot make Title to a Preſentment in Time of War.——F. N B. 39 (C) Becauſe the Writ is Quis Advocationi ultimo præſentavit perſonam &c. And in the new Notes there (d) ſays, See Bracton 248. accordingly, where the Aſſiſe is *taken Per modum Aſſiſæ*, and *not Per modum Juratæ*. And ſays, See alſo 13 E. 3. Brev. al Eveſque 20 by Aldred, and 17 E. 3. 22. by Wilby.

(U. d) In what Caſes the *King* ſhall have a Writ to the Biſhop, [*tho'* he be] *Not Party* to the Writ, [*or tho'* the *Iſſue be not found for him.*]

Watſ. Comp. Inc. 8vo. 529. cap. 27. cites S. C. — Hob. 118, 119. pl. 149. S. C. reports, that the Jury *found* that the Advowſon in Fee was preſentable by the King *by* 2 *Turns contiguous*, and *by the Biſhop for the* 3*d* Turn; and that the King's firſt Turn was ſatisfy'd by preſenting his Clerk, now dead, and *that this is the King's* 2*d Turn*, and concluded, If upon the whole Matter the Court doth judge, That the King was ſeiſed of the Advowſon aforeſaid, ut de uno Groſſo per ſe ut de feodo & Jure, then the Jury found ſo; if not, then contrary. And tho' this Verdict did not find the Iſſue for the King, (for the Iſſue was to be underſtood of the whole Advowſon) yet becauſe it did clearly appear to the Court by the Verdict, and that not out of the Iſſue, that this Preſentation did of Right belong to the King, therefore the Court did award a Writ to the Biſhop for the King, and to remove the Clerk of the Biſhop; and to this alſo the Biſhop aſſented, which was ſo enter'd in the Record of the Judgment. Brownl. 164. S. C.

1. **IN Quare Impedit by the King, if the** Iſſue **be,** Whether the King has all the Advowſon **or not, and the Jury** finds, That he has only a 3d Part, but that now it is his Turn to preſent; **tho' the Iſſue is found againſt the King, yet becauſe it appears that the King has Title, the Writ ſhall be awarded for him. Mich. 14 Ja. B. adjudg'd between the *King* and the *Biſhop of Rocheſter*. Hobart's Reports 165. Same Caſe. For this Matter, which is found, is not out of the Iſſue.**

Watſ. Comp. Inc. 8vo. 527, 528 cap 27. cites S. C. Mo. 872. Trin 14 Jac. S. C. by Name of the Univerſity of Cambridge v. the

2. **In Quare Impedit** by the Univerſity upon the Statute, **becauſe J. S. was a** Recuſant, **if** Defendant pleads **in Bar,** That J. S. was convicted **for a Recuſant,** and that the Manor, to which **this Advowſon is appendant,** was ſeiſed for the King, **for his Part for the Recuſancy, and after the** King granted to him the Manor with the Appurtenances &c. **upon which the Univerſity comes and acknowleges the Plea to be true. In this Caſe a Writ ſhall be awarded to the Biſhop for the King, becauſe nothing paſſed out of the King by the Grant without naming the Advowſon, and ſo the Right remains in the King. Mich. 14 Ja.**

14 Ja. B. Adjudg'd. The Univerſity of *Cambridge* and *Yakeſley's* Caſe. Hobart's Report's 169. S. C. Biſhop of Norwich. For where the Title to the King appears *upon the Record*, there the Court will award a Writ to the Biſhop for the King; but not where the Title to the King appears *upon Evidence*.

3. If an *Abbot brings* Aſſiſe of *Darrein Preſentment*, and it is found for the Abbot, and in inquiring of the Colluſion the *Colluſion is found*, the King upon this Matter ſhall have Writ to the Biſhop without other Preſentment. 21 E. 4. 3. b. pl. 5. Per Chock. *So* in Quare Impedit *between Common Perſons*, if it *appears* by their Title, *that the King has Right* to preſent, he ſhall have Writ to the Biſhop without other Matter ſhewn. 21 E. 4. 3. b. pl. 5. Per Chock.

4. In a *Quare Impedit* * *betwixt* 2 *Strangers*, if there doth appear to the Court a Title for the King, they ſhall award a Writ unto the Biſhop for the King. † F. N. B. 38. (E) Ibid. in the new Notes (a) ſays, See Accordant 21 E. 4 3. b.

Per Choke. ‡ 11 H. 4. 71. Per Hankf. And ſo it ſhall iſſue if it be found againſt the King in a Quare Impedit; and yet if the Right appears for the King on a Special Verdict, he ſhall not have a Writ to the Biſhop. Rex verſus Epiſc. Roffen. See 4 Eliz. 243. 16 H. 7. 12. F. Brief al Eveſque, 13. Bro. 86. 44 E. 3. 10. Stamf 95. a. —— ‡ Br. Brief al Eveſque, pl. 8. cites S. C. & P. Per Hank. and Hill. But Culpeper Contra. And Brooke makes a Quære.

* S. C. cited by Walmſley. Le. 63, 64, pl. 84. in Caſe of **Beverley** v. **Cornwall** Mich. 29 El. and ſaid, That the Judges ſhall in no Caſe reſpect the Title of the King being a Stranger to the Writ, but where a Title appears for him upon the || Pleading or otherwiſe within the Record, and ſo is 11 H. 4. 224. [71. b] by Hankford. But if a clear Title for the King be confeſs'd by the Parties upon Pleading, a Writ to the Biſhop ſhall iſſue for the King. So if ſuch Matter appears in Evidence &c. the Land is ſeiſable into the Hands of the King. — || S P. per Doderidge J. Mo. 901. cites 33 H. 6. 34. 16 H. 7. 12. 11 H. 4. 71. b. pl. 7. F. N. B. 38. (E)

Hobart Ch. J. ſaid, That the King has a Prerogative, that where clear Title appears for him, Writ to the Biſhop ſhall be awarded for the King But he ſaid, This is to be intended where his Title appears by the Confeſſion of the Parties, or by Title without Difficulty or Queſtion; for upon Nihil dicit Writ ſhall not iſſue for the King, nor upon Title appearing by Evidence to the Jury, as was held in the Caſe of the **Univerſity of Cambridge** v. **Malgrave** and **Parley**. But if it appears upon the Record of the Pleading, or by the Confeſſion of the Parties, the Writ ſhall iſſue for the King; otherwiſe, not. Mo. 904. in the Caſe of Colt and Glover v. the Biſhop of Coventry and Litchfield.

† S. C. & P. Arg. and cites 21 E. 3. 30. and 12 H. 7. 12. But where the Title appearing was only Matter of Fact ſuggeſted by Plea of the Attorney-General in a Writ of Error brought of a Judgment, the Court held, That the Plea ought to be rejected for that Reaſon of its being Matter of Fact only, and eſpecially in this Writ of Error, the Judgment being given in C. B. and Execution for the Damages being given in the Caſe, and increas'd by the Statute of 3 H. 7. which is not to be eſtopped, or the Parties to be delay'd by ſuch bare Surmiſes, not being grounded upon any Matter of Record. And after further Argument by Counſel all the Court Seriatim deliver'd their Opinions, That the Pleading is merely void, it being upon a Surmiſe, and without any Record ſhewn. And that there *ought to be a clear Right and Title appear for the King, and confeſs'd by the Parties in Pleading or otherwiſe fully apparent*; For if not, the Court ought not to award a Writ Ex Officio for the King. Cro. C. 192. pl. 4. Mich. 16 Car. B. R. Reſolved by all the Juſtices of B. R. in the Caſe of Yates v. Sir John Dryden & al. —— The Caſe was this; A Quare Impedit was brought by A. B. and C. againſt Y. and the Biſhop of P. in which Y. the *Incumbent pleaded*, That *he was Parſon Imparſonee of the Preſentment of the King*, to whom he derived a Title as ſeiſed in Fee of an Advowſon in Groſs. Upon Iſſue join'd, a *Verdict was found for the Plaintiffs, which likewiſe found the ſeveral Points of the Writ.* The Plaintiffs had *Judgment to recover*, and a *Writ* awarded *to the Biſhop* to remove the Incumbent, and admit the Clerk of the Plaintiffs; *and likewiſe Judgment of Damages* for Half a Year amounting to 100 l. The *Defendant brought* a Writ of *Error*; and *pending that* Writ, the *King brought a Writ of Right of Advowſon*; And by Motion to the Court, the *Proceedings upon the Writ of Error were ſtay'd 'till the Writ of Right ſhould be tried.* Thereupon a *Special Verdict was found contrary to the Verdict in the Quare Impedit.* After this Verdict *one of the Tenants died.* The Counſel for the King inſiſted ſtrongly, That the Verdict in the Writ of Right of Advowſon (being a Writ of the higheſt Nature) ſhould control the Verdict in the Quare Impedit; and the Verdict in Quare Impedit found, That James Ellis, who was alleg'd by the Defendant in the Quare Impedit to have been admitted, inſtituted and inducted Ad Eccleſiam Prædictam ad Præſentationem dictæ nuper Reginæ Elizabethæ modo & Forma prout the Defendant had alleg'd, was not ſo admitted &c. and the Special Verdict in the Writ of Right found, That the ſaid James Ellis was ſo admitted &c. ad Eccleſiam Prædictam ex Præſentatione dictæ nuper Reginæ, which being a more high Action, and expreſly contrary to the former Verdict in the Quare Impedit, deſtroys the Plaintiff's Title; for the Queen had gained Right againſt all by that Preſentation, but him who had the very Right; and tho' the laſt Jury had found, That the Queen had Minus jus habendi Præſentationem, yet foraſmuch as the Queen preſented ſhe had gained the Poſſeſſion; and then had Majus jus than he who had not any Title; and it appears not that the Plaintiffs have any Title, and therefore pray'd a Writ to the Biſhop. The Court held, That the Verdict in the Writ of Right being but a Special Verdict it does not appear (if the Writ had not abated by Death) whether Judgment ſhould have been for the King or for the Defendants, as this Caſe is; And no clear Title appears; for by the Death of one of the Tenants the Writ of Right abated,

and

and the 2d Verdict not in Force; And that there is no ſuch Contrariety appears by the Verdict; for the 2d Verdict, if it had been in Force, is no concluding Record, but only an Evidence, which may well be contradicted. But they all reſolv'd, That tho' the Verdict had been in force, and had been to the contrary, yet being in this Court by Writ of Error, which was only to affirm or reverſe the Judgment in C. B. they would affirm the Judgment, and that there was not any Error therein; which they did, and awarded a Writ to the Biſhop. Cro. C. 585. Trin. 16 Car. Dryden & al. v. Yates & al. And Ibid. 589. Mich. 16 Car. B R. Yates v. Dryden & al.

5. In a Quare Impedit the Iſſue was, If the Advowſon was appendant to the Manor of D. or in Groſs; and the Jury found, That it was appendant; and further found, That the Queen had Right and Title to preſent, for ſhe had preſented at the two laſt Avoidances. And Per Anderſon and Periam J. If it *appears unto the Court upon the Pleading*, that the King had Title to preſent, the Court ſhall award a Writ to the Biſhop for the King; but here appeareth no Title for the Queen upon the Pleading, but only *upon the Verdict*, ſo as the one Part or the other may anſwer to it; And becauſe the Jury found for the Plaintiff, the Title found for the Queen ſhall not be reſpected, but as meer Nugation and Surpluſage; for the ſame was out of their Iſſue and their Charge; and it is no more than if one comes into the Court, and informs us of any Title for the Queen, there the Court ought not to regard it. 1 Le. 323. pl. 455. Trin. 31 Eliz. C. B. Norwood v. Dennis.

6. If in Quare Impedit by the King the King and Party are at Iſſue, which is *found againſt the King*, and *Title appears for the King by Nient dedire of the Party*, yet the Court ſhall not adjudge for the King. Otherwiſe it is where *the Party confeſſeth the King's Title.* Cro. J. 216. Hill. 6 Jac. B. R. The 3d Reſolution in the Caſe of Cumber v. the Biſhop of Chicheſter and Green.

See (Y. d) Fol. 387.

(X. d) Writ to the Biſhop *without Title.* In what Caſes.

S. P. Br. Brief al Eveſque, pl. 26. cites S. C. ——

1. **In a Quare Impedit, if the Writ** abates by Pleading **of** Miſnoſmer of the Plaintiff, **the Defendant ſhall not have any Writ to the Biſhop.** 31 H. 6. 15.

Watſ. Comp. Inc. 8vo. 522. cap 27. cites S.C. —— S. P. 7 Rep. 27. b. cites F. N. B. 38. (M)

S. P. Br. Brief al Eveſque, pl. 26. cites S. C. —— F. N. B. 38. (M) —— S. P. Watſ. Comp. Inc. 8vo. 522. cap. 27. cites S.C.

2. **So if** Defendant pleads Miſnoſmer of himſelf **he ſhall not have any Writ to the Biſhop.** 31 H. 6. 15.

S. P. Br. Brief al Eveſque, pl. 26. cites 31 H. 6. 15. —— F. N. B. 38. (M) —— If it abates for *falſe Latin*, or for *Want of Form*; as *Nominare* for *Præſentare* &c. the Defendant ſhall not have Writ to the Biſhop. Br. Brief al Eveſque, pl. 10. cites 14 H. 4. 11. Per Hank. clearly. —— S. P. But the Plaintiff may have a new Writ of Quare Impedit. Watſ. Comp. Inc. 8vo. 451, 452. cap. 27. cites 3 H. 6. 3. 31 H. 6. 15. F. N. B. 38. b. 38 Aſſ. 9. 7 Rep. 27. Sir Hugh Portman's Caſe.

3. **So if the Writ** abates for Inſufficiency, **the Defendant ſhall not have any Writ to the Biſhop.**

But if the Defendant *pleads in Abatement of the Writ by Matter in Fact*, he ſhall not have Writ to the Biſhop, if he does not make Title. Br. Brief al Eveſque, pl. 9. cites 12 H. 4. 11. Per Hull clearly.

S. P. Br. Brief al Eveſque, pl. 26. cites S. C —— Watſ. Comp. Inc. 8vo. 519. cap. 27. cites S. C.

4. **But if the Writ abates** for Default in the Count, **the Defendant ſhall have Writ to the Biſhop.** 31 H. 6. 15,

5. In

5. **In a Quare Impedit** againſt diverſe Patrons, **if the Writ** abates becauſe one of the Defendants was dead before the Writ purchaſed, **the Defendants ſhall have a Writ to the Biſhop.** 11 H. 6. 53. Watſ. Comp. Inc. 8vo. 521. cap. 27. cites S. C.

6. **In a Quare Impedit againſt Patron and Incumbent, if the** Patron makes Default, and the Plaintiff and Incumbent are at Iſſue upon Plea in Abatement **of the Writ, (ſcil.)** Whether the Plaintiff was made Knight after the laſt Continnance, **and found for the Defendant, the Writ ſhall abate, but Defendant ſhall not have Writ to the Biſhop.** * 7 H. 6. 37. b. **Adjudg'd.** F. N. B 38. (H) S P. and there in Marg. cites 7 H. 6. 15. Per Cur. e contra if the Patron had appear'd and the Incumbent made Default, [and ſays] in 7 H 6. 37. 14 H 4. 16. upon Pleas of the Incumbent a Writ was awarded to the Biſhop.—*Br. Brief al Eveſque, pl. 30. cites S. C. that the Plaintiff and Incumbent were at Iſſue, but takes no Notice what the Iſſue was.—— Watſ. Comp Inc. 8vo. 521. cap. 27. cites S. C. — S. P. Br. Brief al Eveſque, pl. 13. cites 7 H. 6. 15. where the Writ was abated without Writ to the Biſhop by Advice of the Juſtices of both Benches.

7. But **if ſuch Plea had been** found for the Patron **he ſhould have Writ to the Biſhop. Brook Brief al Eveſque** 30. Watſ. Comp. Inc. 8vo. 521. cap. 27. cites S. C.

8. **In Quare Impedit for the Church of D. if** Defendant ſaith, No ſuch Church within the ſame County, **the Plaintiff ſhall have a Writ to the Biſhop.** 8 H. 6. 37. 9 H. 6. 17. **Curia. Contra** 45 E. 3. 6. Br. Quare Impedit, pl. 77. cites S. C. —— Watſ. Comp. Inc. 8vo. 520. cap. 27. cites S. C. For this can be no Damage to the Defendant; for the Writ muſt be to the Church named in the Declaration; and if there be no ſuch Church the Plaintiff can have no Fruit or Advantage by this Writ; and if there be ſuch a Church the Defendant has no Prejudice; for he is ſo far from claiming Title to that Church that he knows nothing of it. Quære. Br. Brief al Eveſque, pl. 1. S P. cites 9 H. 6. 16.

9. **If** one Tenant in Common **brings Quare Impedit** againſt the other, **and this** appears in the Count, **and the Defendant demands Judgment of the Count, becauſe it appears thereby that they are Tenants in Common; whereupon the Court** abates **it, yet the Defendant ſhall not have any Writ to the Biſhop, becauſe he has not made Title; for tho' it appears by the Count, that the Defendant has Right to the Advowſon, yet this is in Common with the Plaintiff, and ſo both ought to have the Writ.** 20 E. 3. **Quare Impedit** 63. **Adjudg'd.** Watſ. Comp. Inc Svo. 523. cap. 27. cites S. C — Ibid. 526, 527. cites S. C.

10. **But in Qua. Imp. if the Plaintiff counts, and** Defendant demurs upon the Count, **and it is adjudged againſt the Plaintiff upon the Count, upon the Matter, a Writ ſhall be granted to the Defendant without making of any Title, becauſe upon the Count the Title to the Defendant appears. D. in** 28 H. 8. 24. **S.** 153. **is cited a Judgment in Mich. 1 H. 8. Rot.** 537. Watſ. Comp. Inc 8vo. 519 cap. 27. cites S. C.— Ibid. 524 cap. 27. cites S. C.

11. **In a Qua. Imp. if the** Defendant makes Default at the grand Diſtreſs, **the Plaintiff ought to make Title to the Patronage. D. 7 El.** 241. 48. **ſo done.** See (Y. d) pl 6. and the Notes there. F. N. B. 38. (N) —— If the *Defendant comes not at the Diſtreſs returned* in Quare Impedit, the Plaintiff ſhall have Writ to the Biſhop without Title made, and this by the Statute; Quod Nota. Br Brief al Eveſque. pl. 2. cites 33 H. 6. 1.———But Hob. 163. in Caſe of **Colt & Glover v. the Biſhop of Coventry** &c. ſays, That in a Quare Impedit both Plaintiff and Defendants are Actors one againſt the other, and therefore the *Defendant* ſhall have a Writ to the Biſhop as well as the Plaintiff, *but not without a Title* appearing to the Court; and therefore if the Defendant never appears, yet the Plaintiff muſt make out a Title *for Form's ſake*, and ſo muſt the Defendant if the Plaintiff be Nonſuit.

12. He who *pleads to the Writ* in Quare Impedit, *and does not make Title*, ſhall not have Writ to the Biſhop; Quod Curia Conceſſit. Br. Quare Impedit, pl. 31. cites 43 E. 3. 24. S. P. Br. Quare Impedit, pl. 54. cites 12 H. 4 11. per Hill.———S. P. Ibid. pl. 150. cites 10 H. 6. 4———S. P. Br. Double, pl. 23. cites 43 E 3. 25.——— F. N. B. 38. in the new Notes there (W. W) cites S. C.

S P. Br. Briefal Eveſque, pl. 11. cites S. C.——Br. Eſſoign, pl. 46. cites S. C.——F. N. B 38. (L) in the new Notes there (h) cites S. C.

13. Where *Plaintiff in Quare Impedit is eſſoigned* which is adjourned, and *at the Day it is found that he had Attorney in Court not eſſoigned*, the Defendant ſhall have Writ to the Biſhop. Br. Quare Impedit, pl. 58. cites 14 H. 4. 12, 13.

So in Caſe of the King Plaintiff, per 5 Juſtices, Contra per Martin and Strange J. Ibid. pl. 24. cites 11 H. 6. 3.

14. In Quare Impedit, the *Sheriff returned Nihil to the Summons, Attachment and Diſtreſs*; Writ to the Biſhop ſhall iſſue *though no Writ be ſerved*. Br. Briefal Eveſque, pl. 15. cites 21 H. 6. 56.

But it is ſaid, *if the Defendant had made Title in his Bar, and the Plaintiff after this had been Nonſuit*, there the Defendant ſhall have Writ to the Biſhop without other Title. Br. Briefal Eveſque, pl. 2. cites 33 H. 6. 1.——If the Plaintiff is *Nonſuited after Appearance and before Count* made, yet if the Defendant will make Title to himſelf, he ſhall have Writ to the Biſhop. Br. Briefal Eveſque, pl. 21. cites 14 E. 4. 9.

15. In Quare Impedit the Plaintiff was nonſuited, and the *Defendant by Advice of the Court made Title De bene eſſe before he could have Writ to the Biſhop*. Br. Briefal Eveſque, pl. 2. cites 33 H. 6. 1.

16. Quare Impedit *againſt two*, the *one is eſſoigned*, the *Plaintiff made Default*, and the *other* Defendant *made Title*, and prayed Writ to the Biſhop; he ſhall have it. Contra it ſeems if he will not make Title. Br. Briefal Eveſque, pl. 19. cites 38 H. 6. 14.

If Quare Impedit is brought againſt two, and *one makes Default* at the Grand Diſtreſs, and the *other pleads in Bar*, Writ to the Biſhop ſhall be awarded for the Plaintiff by the Statute of *Marlbridge cap.* 12. without Title made; and if the Bar pleaded by the other Defendant be found for him, he alſo ſhall have Writ to the Biſhop; and theſe two Perſons being upon theſe two Writs admitted, inſtituted and inducted, ſhall try their Right in Aſſiſe or Treſpaſs. Jenk. 95. pl. 85. ——Watſ. Comp. Inc. 8vo. 525. cap. 27. cites S. C.—— Watſ. Comp. Inc. 8vo. 526. cap. 27. cites S. C.——Watſ. Comp. Inc. 8vo. 492. cap. 26. cites S. C.

17. Quare Impedit *againſt two*; *Proceſs continued till the Diſtreſs*, at which Day the *one appeared*, and the *other made Default*; And by the Opinion of the Court, Writ to the Biſhop ſhall iſſue againſt him who made Default; and the other ſhall be compelled to anſwer. Br. Briefal Eveſque, pl. 17. cites 14 H. 7. 19.

Br. Error, pl. 136. cites S. C.

18. In Quare Impedit, the *Plaintiff recovered by Default*, and the *Plaintiff appeared by Attorney, who had no Warrant*, and after the *Judgment was reverſed in B. R. by Writ of Error for this Cauſe*; by which the Defendant prayed Writ to the Biſhop, and could not have it without making Title. Br. Briefal Eveſque, pl. 20. cites 1 H. 7. 13.

19. If the *Sheriff returns* upon a Quare Impedit, *Quod Querens non invenit Plegios*, then the Plaintiff may find Pledges in the Common Pleas, and ſhall have a new Quare Impedit in the Common Pleas; *and if* the Sheriff return upon that Writ *Tarde*, and the Defendant appear, and the *Plaintiff* be *called* and *appeareth not*, the Defendant ſhall not have a Writ to the Biſhop, becauſe that no Writ is ſerved againſt the Defendant. F. N. B. 38 (O)

See (X. d)

(Y. d) Writ to the Biſhop *upon Title made.* Upon what Plea.

Watſ. Comp. Inc. 8vo. 521. cap. 27. cites S. C.

1. IF the Defendant abates a Qua. Imp. becauſe the Church was full of the Preſentment of the Plaintiff himſelf before Writ purchaſed,

ſed, **be ſhall not have Writ to the Biſhop upon Title made.** 13 H. 4. 7.

2. **If the Defendant** abates **the Writ for** falſe Latin, **he ſhall not have Writ to the** * **Biſhop upon Title made.** Co. 7. *Sir H. Portman*, 27 b. **Contra** 13 H. 4. 7. * Fol. 388. Br. Quare Impedit, pl. 56. cites 4 H. 4. 10, 11. per Hanke —— S. P. F. N. B. 38. [H]

(2) **If the Plaintiff be** Nonſuited * after Appearance, **the Defendant ſhall have Writ to the Biſhop upon Title made; For this is peremptory to the Plaintiff.** Co. 7. *Sir Hugh Portman*, 27. b. **though it be within the** 6 **Months.** Br. Quare Impedit, pl. 84 cites 22 H. 6. 44, 45. — Br. Brief al Eveſque, pl. 16. cites S. C —— *So* if the Plaintiff *diſcontinue* his Suit. 7 Rep. 27. b. cites Hob. 138. —— * Tho' it be *before any Count* made, yet if the Defendant will make Title he ſhall have Writ to the Biſhop. Br. Quare Impedit, pl. 136. cites 19 E. 4. 9.

3. [So] **if the Plaintiff be nonſuited in a Quare Impedit,** after the Defendant has pleaded in Bar, **the Defendant ſhall have a Writ to the Biſhop.** 38 E. 3. 8. b. Watſ. Comp. Inc. 8vo. 519. cap. 27. cites S. C.

4. **If the Plaintiff be** Nonſuited **in a Qua. Imp. the Defendant ſhall not have Writ to the Biſhop without Title made.** 9 H. 6. 4. b. 11 H. 6. 8. 2 H. 5. 6. **per Curiam.** S. P. Arg. Litt. R. 226. in the Earl of Pembroke's Caſe.

—— Br. Quare Impedit, pl. 84. cites 22 H. 6. 44, 45. —— Br. Brief al Eveſque, pl. 16. cites S. C. —— F. N. B. 38 [K]

5. **So upon** Nonſuit, **Defendant ſhall not have Writ to the Biſhop without Title made, tho' he** cannot make Title, **becauſe one of the** * **Patrons is Plaintiff; Becauſe he held in** Coparcenary, **ſo that if he ſhould make Title it ſhould be contrary to the Action, which ſhall not be ſuffered.** 11 H. 6. 8. **Adjudged.** * Orig. is (Defendants) —Br. Brief al Eveſque pl. 33. cites S. C. and there it is, tho' he be one of the (Plaintiffs). Though one of the Defendants be one of the Parties; For it was brought *by* 3 *againſt* 2, becauſe they *held in Coparcenary*, ſo that if he ſhould make Title, it would be contrary to his Action, and yet the Opinion of the Court was as above. Br. Brief al Eveſque, pl. 25. cites S. C And Brooke ſays, Quære, If he may not *make Title by a ſtrange Name*, and then it aids the whole Matter.

6. **If** at the Diſtreſs returned Defendant makes Default, **the Plaintiff ſhall not have Writ to the Biſhop without Title made.** 10 H. 6. 4. b. But F. N. B. 38 (N) ſays, That if the *Defendant* does *not appear at the Diſtreſs returned* againſt him, the Plaintiff ſhall have a Writ to the Biſhop, without making Title—— But Ibid in the New Notes (b) ſays, That if *he appears* at the Grand Diſtreſs, *and after makes Default*, a Diſtringas ſhall iſſue, and then a Writ to the Biſhop. 13 E. 3. Brief al Eveſque 19. and altho' *Nihil* be *returned on every Part of the Proceſs*, viz. on the Summons, Attachment, and Diſtreſs, yet the Plaintiff ſhall have Writ to the Biſhop. 12 H. 4. 4. 21 H. 6. 56 11 H. 6. 3.

In Quare Impedit the *Defendant pleaded to Iſſue*, and after *made Default*, and a Writ was awarded unto the Biſhop for the Plaintiff. F. N. B. 38. (S)

If *at the Diſtringas* returned againſt the *Defendant*, he comes, and *has Day by the Prayer of the Parties* and afterwards *makes Default*; The Plaintiff ſhall not have a Writ to the Biſhop, but a new Diſtringas. F. N. B. 38. (T) —— Note, The Defendant *came* at the Grand Diſtreſs, *and pleaded to the Inqueſt.* Contra, where he comes not at the Pone per Vadios &c. F. N. B. 38 (T) in the New Notes there (e) cites 16 E. 3. Brief al Eveſque 18. See 8 E. 2. Quare Impedit, 168. 16 E. 3. pl. 17. 13 E. 3. pl. 19. Brief al Eveſque 19. See 2 H. 4. 1. accordant to the Diverſity.

He that will have Writ to the Biſhop for Default ſhall make Title. And nota, that the Plaintiff *cannot releaſe his Damages* in Quare Impedit *before they are taxed*; But it *was recorded that the Plaintiff would not have Damages*, and upon this he had Writ to the Biſhop. Br. Brief al Eveſque. pl. 32. cites S. C.

7. **If** 3 **bring Qua. Imp. and after** 2 of them are nonſuited, **yet the Defendant ſhall not have any Writ to the Biſhop; For peradventure the** 3d **has the Right.** 12. R. 2. **Brief al Eveſque.** 16. Watſ. Comp. Inc. 8vo. 520. cap. 27. cites S. C.

8. IF

Watſ. Comp. Inc. 8vo. 520. cap. 27. cites S. C. — 8. If a Man brings 2 Writs **of Dua. Imp. and after** is nonſuited in one, **yet the Defendant ſhall not have any Writ to the Biſhop upon this tho' he makes Title,** 12 R. 2. Brief al Eveſqe 16.

9. Quare Impedit *by the King againſt the Prioreſs of D. and A. B.* the *King made Title by Voidance during the Temporalties in his Hands*; The *Prioreſs ſaid*, That *Ne voida pas Tempore Vacationis, Priſt*; and the other e contra, *and A. B. ſaid, That he is in as Parſon Imparſonee of the Preſentment of the old Prioreſs*; *Judgment, if Writ lies* againſt him, by which the King ſhall have Writ to the Biſhop againſt him, and *Ceſſet Executio* quouſque the Iſſue be tried between the others. Br. Brief al Eveſque. pl. 31. 24 E. 3. 34.

But where the *Incumbent ſays, That the King has another Quare Impedit againſt the ſame Plaintiff of this Voidance,* and prays Writ to the Biſhop, that he may be admitted notwithſtanding Reclamation of the Plaintiff, this ſhall not be granted; For the *Plea of the Incumbent is not to have Writ to the Biſhop but only to excuſe himſelf of the Tort.* Brooke ſays, And ſo ſee to what Purpoſe the Plea of the Incumbent is which is given to him by the Statute, and who ſhall have Writ to the Biſhop. Br. Quare Impedit, pl. 59. cites 14 H. 4. 15, 16.

10. In Quare Impedit *againſt* 2, the one as *Incumbent, and* the other as *Patron*, the *Incumbent intitled the King by a Ward, and the Church voided, and the King preſented him*, and the *Defendant made other Title, and* the *Plaintiff was demanded, and did not come*, and therefore, per Hank. Hill, and Culpepper, the Defendant who has made Title, to which the Plaintiff has not anſwered, ſhall have Writ to the Biſhop. Br. Quare Impedit. pl. 59. cites 14 H. 4. 15, 16.

If the Defendant *pleads to the Writ* in Quare Impedit, he ought to make Title; For otherwiſe he ſhall not have Writ to the Biſhop, per tot. Cur. quod nota. Br. Brief al Eveſque. pl. 3. cites 43 E. 3. 25.

12. Where the Defendant pleads an *inſufficient Plea*, the Plaintiff ſhall have Writ to the Biſhop, Br. Brief al Eveſque. pl. 1. cites 9 H. 6. 16.

(Z. d) *What* ſhall be ſaid a *ſufficient Title.*

Watſ. Comp Inc. 8vo. 520. cap. 27. cites S. C. 1. **In Quare Impedit** againſt 2, one pleads that he does not claim &c. but conveys a Title to the King, who preſented him, **and** the other makes Title. **If the Plaintiff be afterwards** nonſuited, **the Preſentee ſhall not have a Writ to the Biſhop; For what he pleads was but in Excuſe of the Tort, and not to have Writ to the Biſhop, but the other ſhall have the Writ.** 14 H. 4. 16.

F. N. B. 38. (J) cites S. C.--Br. Brief al Eveſque, pl. 23. cites S. C. —— The Plaintiff cannot have Writ to the Biſhop without making Title, but the *Title in the Declaration is ſufficient.* Br. Quare Impedit, pl. 150 cites 10 H. 6. 4.

2. **In a Quare Impedit** againſt the Biſhop and others, **if the** others make Default, and the Biſhop appears, **tho' the Plaintiff ſhall not have Writ to the Biſhop againſt the others, who make Default without Title, yet if he** counts againſt the Biſhop, **this ſhall be a ſufficient Title againſt the others.** 10 H. 6. 5.

(A. e) Writ to the Biſhop. *Upon what Plea* it ſhall be granted.

1. IN Quare Impedit, if the Defendant ſaith, That Ne Diſturba pas, the Defendant ſhall have Writ to the Biſhop. 17 E. 3. 71. Watſ. Comp. Inc. 8vo. 520. cap. 27 cites S. C. — S. P. Br. Brief al Eveſque. pl. 14. cites 21 H. 6. 45. —— pl. 22. cites 21 E. 4. 65. —— S. P. Where the King was Plaintiff. Br. Quare Impedit, pl. 48. cites 7 H. 4 32. And Brooke ſays, That ſo it ſeems that this Plea will only ſave the Defendant his Damages. —— S. P. Br. Brief al Eveſque. pl. 4. cites S. C. —— Some held, that tho' the Patron pleads this Plea of Ne Diſturba pas, *yet this ſhall not conclude the Biſhop, but that he ſhall ſay, that he preſented, and his Title was found by Jure Patronatus, and he preſented his Clerk.* Br. Quare Impedit, pl. 80. cites 21 H. 6. 44.

In Quare Impedit, the *Plaintiff made Title by the Iſſue of the youngeſt Daughter*, the *Defendant made Title as Tenant by the Curteſy by Marriage of the eldeſt Daughter*; To which the Plaintiff ſaid, *That Ne Diſturba pas*, by which the Defendant had writ to the Biſhop, in as much as the Plaintiff relinquiſhed his Title. Br. Brief al Eveſque, pl. 29. cites 5 H. 5. 10. — Br. Quare Impedit, pl. 62. cites S. C.

Ne Diſturba pas, *is, in Effect, the General Iſſue in a Quare Impedit*, and every Defendant may plead it without more; Becauſe it is only a Defence of the Wrong with which he ſtands charged, and leaves the Plaintiffs Title not controverted, but in Effect confeſſed, and therefore upon that Plea the Plaintiff may preſently pray a Writ to the Biſhop, or (at his Choice) maintain the Diſturbance for Damages. Hob. 162. in the Caſe of Colt and Glover v. Biſhop of Coventry and Litchfield.

2. In a Quare Impedit, if the Defendant ſaith, that pending the Writ the Preſentee of the Plaintiff is admitted, inſtituted, and inducted by the Biſhop, the Plaintiff ſhall have a Writ to the Biſhop, Becauſe he does not deny the Diſturbance, nor the Right of the Patron. 11 R. 2. Quare Impedit 144. Adjudged. Watſ. Comp. Inc. 8vo. 521. cap. 27. cites S. C. ——

3. In Quare Impedit againſt the Ordinary and others, if the Ordinary ſaith that he claims nothing but as Ordinary, the Plaintiff ſhall have Judgment againſt the Ordinary preſently, to have Writ to the Biſhop, but Ceſſet Executio &c. 17 H. 7 Rell. 43. Watſ. Comp. Inc. 8vo. 524. cap. 27. cites S. C. — Upon ſuch Plea of the Ordinary, the Plaintiff ſhall recover this Preſentment, per Paſton; But per Markham he ſhall not have Writ to the Biſhop; For the Preſentation to the Ordinary ſhall be Seiſin to the Party; Quod Curia conceſſit. Br. Quare Impedit, pl. 80. cites 22 H. 6. 28, 29.

4. Quare Impedit by the *Queen*, and *Counted that the Manor to which* &c. *was held of one S. in her Ward, and intitled herſelf as by Ward for Cauſe of Ward; the Defendant ſaid that the Anceſtor of the Infant held of N. who held over of S. Abſque hoc, that he held of S.* immediately, and a good Plea; For there the Queen had Title. Br. Quare Impedit, pl. 96. cites 24 E. 3. 54— And the ſame Year, fol. 75. it was found for the Plaintiff, and Damages &c. and that the Church was full, and this ſeems to be by Lapſe, and the Plaintiff refuſed the Damages, and prayed only Writ to the Biſhop, and had it as his Peril without Damages, and this was to have Advantage to ouſt the Incumbent. Br. Quare Impedit, pl. 96. cites 24 E. 3. 54.

5. Quare Impedit by the Prior againſt the Biſhop of C. and others, *one pleaded Grant de Proxima Advocatione* to J. N. by the Prior and Convent, who granted it to the Defendant, and ſo it belonged to him to preſent, and prayed Writ to the Biſhop, and after Writ to the Biſhop was awarded for him who had the Grant. Br. Quare Impedit. pl. 49. cites 7 H. 4. 34. 36.

6. Between Common Perſons, the *Defendant may traverſe the Title of the Plaintiff, without intitling of himſelf*, but *then he ſhall not have Writ to the Biſhop.* Br. Quare Impedit. pl. 138. cites 21 E. 4. 1. 3.

Fol. 389.

(B. e) Writ to the Bishop. *In what Cases* it shall be *granted.*

See Rege inconsulto (E) pl. 2.

1. IN a Qua. Imp. against Patron and Incumbent, if the Incumbent pleads that he is Parson imparsonee, as that he is presented instituted and inducted, and pleads a good Bar, and the Patron also pleads his Title, but does not acknowlege any Plenarty of the Presentee, and Judgment is given against the Plaintiff, the Patron shall have a Writ to the Bishop; For the false Plea of the Incumbent shall not conclude the Patron, because the Patron could not contradict the Plea of the Incumbent in this Point. Hobart's Reports 262. Puleston's Case.

Watf. Comp. Inc. 8vo. 509, 510. cap 26. cites S. C. —— Where the *Defendant claims* the Advowson *as Parson imparsonee*, although it be found for the Defendant, he shall not have a Writ to the Bishop. F. N. B. 38. (L)

Watf Comp Inc. 8vo. 510. cap. 26. cites S. C.

2. If a Quare Impedit be brought against the Incumbent of the King, and he pleads that he is Parson imparsonee and pleads a good Bar against the Plaintiff, shewing Title to the King to present by reason of Simony, upon which the Plaintiff demurs, and it is adjudged against him. Though in this Case the Defendant has pleaded that he is instituted and inducted, yet the King may suggest to the Court, that he is not instituted and inducted, contrary to the Plea of his Presentee, because Title appears for the King who is a 3d. Person always present in Court, and shall not be bound by the Plea of his Presentee, and upon this Suggestion entered he shall have a Writ to the Bishop. M. 15 Ja. B. between *Benedict and Winchcomb, and Puleston*, adjudged per Curiam, except Hutton, who seemed e contra. Hobart's Reports 261. same Case.

Watf. Comp. Inc 8vo. 510. cap. 26. cites S. C. So if the Plaintiff in Quare Impedit be *Nonsuited after Appearance*, the *Defendant shall make Title*, and have Writ to the Bishop, though it be before Count; and so see that it is peremptory. Br. Nonsuit, pl. 62. cites 19 E 4. 9. and 33 H. 6. 1.

3. But it seems, that without this Suggestion the King shall not have any Writ to the Bishop. M. 15 Ja. B. In the said Case the Court was divided.

4. In Quare Impedit the Plaintiff shall recover, and shall have a Writ to the Bishop, and Damages *upon the Default of the Defendant after Appearance*; Quære if it had been after a Continuance. Br. Damages, pl. 192. cites 2 H. 4. 1.

5. The King shall have Writ to a Bishop *to induct* one *into a Prebend* which the King has given unto him, and to give him a Seat in the Quire, and a Place in the Chapter-House. F. N. B. 34. (D)

6. And a Man shall have a Quare Impedit *of an Hermitage*, and a Writ to put him into corporal Possession. F. N. B. 34. (E)

7. F. N. B. 38. (C) the Note in the Marg. says, That if *in* a *Quare Impedit* the *Defendant disclaims*, there the Plaintiff shall have a Writ to the Bishop; *Contra* in Disclaimer *in a Writ of Right of Advowson*. 6 E. 3. 7. Error 78. The Reason is, because he cannot remove his Clerk after the 6 Months past.

Ibid. in the new Notes (c) says, See Accordant 13 E. 3. Brief al Eveſque 21.

8. *At the Distress returned against two, one appears*, and the *other makes Default*, the Plaintiff shall have a Writ to the Bishop against him who made Default, and yet it may be that the other Defendant may bar the Plaintiff; and it is so used at this Day; but the contrary was adjudged. H. 7. E. 3. for the Cause before said. F. N. B. 39. (B)

Lib. Entry Quare Impedit in Judgment 4, fol. 50. But a Cesset Executio quoad Breve &c. quousque. Vide contra 7 E. 3. 4 (expressly) in a Writ against the Bishop and others. Where the *Bishop disclaims*, the Plaintiff shall have a Writ to the Bishop; Sed *cesset Executio* quousque Placitum &c. See 17 E. 3. Brev. al Eveſque 58. If the King brings a *Quare Impedit against B* and *another* Quare Impedit *against B.*

B. and C and *B. comes* in, & non poteſt dedicere, the 1ſt. Writ to the Biſhop ſhall proceed for the King notwithſtanding ; for it is an Original.

9. Upon a *Recovery within 6 Months againſt the Incumbent* in Quare Impedit the Recoveror may preſent his Clerk to the Biſhop *without any Writ to the Biſhop* ; Per Coke, Doderidge and Haughton. Roll. R. 213. Trin. 13 Jac. Harris v. Auſtin

Plaintiff recovered in Quare Impedit after the 6 Months, but it was found, that the *Church was full of the Collation of the Metropolitan*, it was doubted if in this Caſe the Plaintiff ſhould have a Writ to the Biſhop ; for the Court cannot adjudge whether the Metropolitan has done wrong or not, but this ſhall come in Trial in Quare non admiſit. Br. Quare Impedit, pl. 53. cites 11 H. 4. 80. ——If a Man *recovers an Advowſon*, and the *6 Months paſs*, yet if the *Church is void*, the Patron may pray a Writ unto the Biſhop, and ſhall have it ; and if the Church be void when the Writ comes to the Biſhop, the Biſhop is bound to admit his Clerk. F. N. B. 38. (F) —— Where the Plaintiff *recovers by Verdict* in a Quare Impedit, and it is *found* by the ſame Verdict, *that the 6 Months are paſt, and that* the *Metropolitan has preſented*, whereas the Ordinary ought to have preſented &c. and that the *Year is now paſt* &c. yet the Plaintiff ſhall have a Writ to the Biſhop. F. N. B. 38. (P) cites 38 E. 3. 12.

10. In a *Quare Impedit againſt A. and B. and the Biſhop B. made Title*, and the *Biſhop* pleaded that he *claimed nothing but as Ordinary*. The *Biſhop died* ; A. *ſuggeſted this on the Roll*, and prayed that the Plaintiff might reply ; and for *want of a Replication*, the Entry was made Quod prædict. Querens licet Solemniter exactus non venit nec eſt proſecutus Breve ſuum, ideo Conſideratum eſt &c. Et Breve Epiſcopo. Upon this a Writ of Error was brought, and the Judgment was affirmed ; becauſe it is a *Nonſuit* after Appearance, which in a Quare Impedit is peremptory. 2 Salk. 559. Mich. 3 W. & M. B. R. Rot. 569. Berkley v. Hanſard.

(C. e) Writ to the Biſhop. *To whom* it may be granted, [or *awarded*.]

See Trial (U) pl. 16, 17.

1. IF in a Quare Impedit againſt the Biſhop and others the Biſhop be found a Diſturber, the Writ ought to be granted to the Metropolitan upon Prayer of the Recoveror. Time of E. 1. 83. Put for a Rule, Contra 30.

Watſ. Comp. Inc. 8vo. 546. cap. 28. cites S. C.

2. In Qua. Imp. againſt the Incumbent and Ordinary, if the Incumbent claims in by the Ordinary by Lapſe, and a Writ awarded againſt him as a Diſturber, though the Ordinary ſays, That he claims nothing but as Ordinary by Lapſe, yet upon Prayer of the Plaintiff the Writ ſhall be awarded to the Metropolitan. 19 E. 3. Quare Impedit 153. 5 H. 7. 22. Quære. 8 H. 4. 22. b.

Watſ. Comp. Inc. 8vo. 546. cap. 28. cites S. C. ——Error was aſſigned in Quare Impedit brought *againſt the Biſhop of W. and* 3 *others* ; *the Biſhop pleaded that he claimed nothing but Inſtitution and Induction as Ordinary*, Judgment if, without ſpecial Diſturbance alleged, this Action againſt him ought he to maintain ; and thereupon *Writ was awarded to the Metropolitan*, and the *other Pleaded in Bar* ; upon which the *Plaintiff took Iſſue*, which is *found for him, and that the Church was full of the Collation of the Biſhop Infra tempus ſemeſtre, and Writ awarded to the Metropolitan againſt them* ; and it was *aſſigned for Error, becauſe the Writ was awarded to the Metropolitan where no Default was in the Biſhop*. Alſo it was aſſigned for Error, *that they inquired if the Church was full of the Collation of the Biſhop* &c. *and awarded Writ to the Metropolitan where the Biſhop was out of Court by the firſt Judgment* ; and per Gaſcoign, it is not Error ; For the Biſhop remains Party after the Writ awarded ut ſupra &c. the Plaintiff may aſſign ſpecial Diſturbance, and Proceſs ſhall be continued againſt him ; and if Diſturbance be found, the Plaintiff ſhall recover Damages againſt him ; but Hill and Norton ſaid, that it was Error ; Et Adjornatur. Br. Brief al Eveſque, pl. 6. cites 8 H. 4. 22.

3. In a Qua. Imp. againſt Patron and Ordinary, if the Biſhop claims nothing but as Ordinary, whereupon Judgment is given againſt him with a Ceſſet Executio, and after Judgment is alſo given againſt the

Watſ. Comp. Inc. 8vo. 545 cap. 28. cites S. C.

—So in Quare Impedit *against the Bishop and another* the *Bishop was essoigned*, the *Plaintiff made Default*, and the other *Defendant made Title*, and prayed Writ *to the same Bishop*, upon the Default of the Plaintiff, and had it; Quod Nota, *after the Title made*, and not before. Br. Quare Impedit, pl. 110. cites 38 H. 6. 14.

the Patron, and a Writ to the Bishop granted against him, this may be directed to the same Ordinary, though he be Party to the Writ; because he is not found a Disturber. Co. 6. *Boswell* 49. New Entries 494. to the Guardian of the Spiritualties of the same Ordinary.

Watſ. Comp. Inc. 8vo. 545. cap. 28. cites S. C.

4. And in the said Case the Writ to the Bishop may be awarded to the Metropolitan, because the Ordinary is Party to the Writ. 8 H. 4. 22. b. Adjudged in B. and this assigned for Error in Writ of Error; But there it was found that the Bishop had collated by Lapse to the Church. Contra 5 H. 7. 22. But Quære.

Fol. 390.

Watſ. Comp. Inc. 8vo 549. cap. 28. cites S. C.

5. In a Qua. Imp. for a Church within the Jurisdiction of York, if the Writ to the Bishop be awarded to the Archbishop of Canterbury, this is not void, but only erroneous. Tr. 3 Ja. B. per Curiam.

Watſ Comp. Inc. 8vo. 547. cap. 28. cites S. C. S. P. F N. B. 38 in the New Notes there (M. H) cites D. 327, 328 & D. 76, 77 19 E. 3. Quare Impedit 153.

6. In a Quare Impedit, if the Archbishop of York be found a Disturber, the Writ shall be awarded to the Archbishop of Canterbury. Tr. 3. Ja. B. said to be the usual Course. D. 16. El. 327. 7. Adjudged. Coke's Entries 496. c. a.

Tho' he was *not Party to the first Writ.* Noy 148. S. C. — cites 22 E. 3. 13. — Watſ. Comp. Inc. 8vo. 548. cap. 28. cites S. C.

7. If a Quare Impedit be brought against Patron Incumbent, and the Archbishop of Canterbury, Guardian of the Spiritualties of Chichester, Sede Vacante of the Bishop, and after a Bishop is created, and after Judgment upon Non sum Informatus is given for Plaintiff, the Writ shall be awarded to the Bishop of Chichester, because he is Immediate Ordinary and Officer to the Court. M. 5. Ja. B. Sir *Thomas Pelham*, per Curiam.

——— In a Quare Impedit the Plaintiff recovered, and had a Writ to admit his Clerk, directed *to the Dean and Chapter, Guardian of the Spiritualties, Sede Vacante* of the Bishoprick, which is not returnable, and *before the Writ was executed a Bishop was created*; It was doubted whether the Authority to execute the Writ be ceased in the Dean and Chapter (Guardians of the Spiritualties) And it seemed, That upon a Suggestion made to the Court, Eo quod nihil Actum fuit in Breve Prædicto, Another Writ might be awarded to the Bishop, and may be made returnable, if the Party please. D. 350. pl. 19 Pasch. 18. Eliz. Anon. —— Watſ. Comp. Inc. 8vo. 548. cap. 28. cites S. C.

Watſ. Comp. Inc. 8vo. 548. cap. 28. cites S. C. —Br. Quare Impedit, pl. 49. cites 7 H. 4. 34. 36. per Hails.

8. When the Inferior Ordinary is found a Disturber Sede Vacante of the Archbishoprick, the Writ shall be awarded to the Guardian of the Spiritualties of the Archbishoprick. Time of E. 1. 83. Put for a Rule.

S. P. Nor to the Bishop's Vicar, if the Bishop be out of the Realm; but in that Case he has a Sicut Alias to the Metropolitan; And yet the Bishop was never found a Disturber. F. N. B. 38 (Q) in the New Notes there (d) cites S. C. ——— Watſ. Comp. Inc. 8vo. 546. cap. 28. cites S. C.

9. In Quare Impedit if the Plaintiff recovers, and has *Writ to the Metropolitan*, there *he cannot have Writ to the Bishop after*; per Thorp. Br. Brief al Evesque, pl. 12. cites 38 E. 3. 12. 22.

Br. Proceſs, pl. 50 cites S. C. —

10. The *Metropolitan had certified, That it is out of his Jurisdiction, and that the Bishop is out of the Realm, and has made a Vicar his Lieutenant to do*

do all Things for him, and prayed Writ to him. Per Thorp, we are not appriſed, whether he has made ſuch Lieutenant, and till *we are certified that he has done ſo, we will not write to any but to him who is immediate Officer*, which is the Biſhop. Br. Brief al Eveſque, pl. 12. cites 38 E. 3. 12. 22.

F. N. B. 38 (Q) in the New Notes there (d) cites S. C. — Watſ. Comp. Inc. 8vo, 546. cap. 28. cites S. C.

11. Quare Impedit lies in Durham, and Writ ſhall be awarded *to the Biſhop there*; *contrary in Wales*, *Guernſey*, and the like. Br. Quare Impedit, pl. 152. cites 11 H. 6. 3. per Danby and Marten.

12. If a Man recovers his Preſentation *in C. B. againſt the Biſhop*, then he may have a Writ to the ſame Biſhop to admit his Clerk, or to the Metropolitan. F. N. B. 38 (B)

S. P. or to the Vicar General, if the Biſhop be out of the Realm. F. N. B. 38 (Q) —— Ibid. in the New Notes (d) ſays, ſee 16 E. 3. Quare non admiſit. 3. —— F. N. B. 38. (B) the Note in the Margin, cites 7 H. 8. 32. 8. H 4. 22. — A Writ ſhall iſſue to the Metropolitan, if the Biſhop be Party; Quære, for the *Biſhop* did *diſclaim* as Patron in 8 H. 4. F. N. B. 38. (B) the Note in the Margin.

13. Quare Impedit was brought *againſt the Archbiſhop*, *the Biſhop*, *and 3 Defendants*; The Archbiſhop pleaded, That he claimed nothing but as Metropolitan; The Biſhop pleaded, That he claimed nothing but as Ordinary; The Defendants made a Title; Judgment was given for the Plaintiff; It was, among other Things, aſſigned for Error, That the *Writ was awarded to the Archbiſhop*, where it ſhould have been to the Biſhop. All the Court *agreed*, That all the Books are, That *he may have his Writ to the one or the other*, where the Ordinary is a Diſturber. And Coke Ch. J. ſaid, He had always obſerved this, If he be Party to the Suit or not, it is in the Party's Election to have his Writ to the Biſhop, or the Metropolitan. 3 Bulſ. 174. Paſch 14 Jac. Grange v. Dennis.

Roll. Rep. 363. 397. S. C. —— Jenk. 324. pl. 36. S. C. & P. —— Watſ. Comp. Inc. 8vo. 545. cap. 28. cites S. C.

(C. e. 2) Writ to the Biſhop. *Proceedings*, *Pleadings* &c.

1. IN Quare Impedit *againſt the Biſhop*, the *Plaintiff recovered*, and had *Writ to the Biſhop to diſincumber the Church*, viz. *Diſtringas* Epiſcopum; [the Sheriff] returned in Iſſues 20 s. and [the Plaintiff] prayed another Diſtreſs, and had it. Br. Quare Impedit, pl. 72. cites 21 E. 3. 30.

2. If the *Sheriff returns Nihil at the Summons in Quare Impedit*, and *the like at the Attachment*, and *the like at the Diſtreſs*, yet Writ to the Biſhop ſhall be awarded. Br. Quare Impedit, pl. 81. cites 21 H. 6. per Ardern, & P. 15. E. 3. by him.

3. The Plaintiff had *Writ to the Biſhop*, *which was returned Not ſerved*, *& Alias & pluries awarded*. Br. Quare Impedit, pl. 123. cites 5 E. 4. 115.

S. P. And there ſhall be an Attachment againſt the Biſhop, if Need be, F. N. B. 38 (C) —— Note on this Writ there lies an *Alias*, *Pluries* & *Attachment*, and thereon the Parties ſhall plead as in a Non Admiſit. (F) (N) 38. (E) in the New Notes there (a)

4. If the *King recovers* in C. B. any *Prebend*, or Sub-deanery, *or Dignity againſt the Biſhop*, *and gives the ſame by his Letters Patents* to another Clerk, The *Clerk ſhall ſhew the Letters Patent* in C. B. and thereupon ſhall have a Writ unto the Biſhop to admit him, and to induct him; And if the *Clerk dies before he is* admitted and *inducted*, and the *King gives the ſame by other Letters Patent unto another* Clerk, that *Clerk ſhall have a Writ*

out of the Chancery, directed *unto the Juſtices* of C. B. *reciting* the Recovery, and how that the other Clerk died before he was admitted, and that he has now granted the ſame to this Clerk by his Letters Patent, *commanding the Juſtices, That they ſend another Writ* to the Biſhop, that he admit his Clerk, notwithſtanding the King's Collation before made to the other Clerk. F. N. B. 38 (D)

5. Note; This *Writ* is expreſsly judicial, and therefore *ſhall iſſue out of the Place where the Record is.* If Judgment be given at the Niſi Prius the Juſtices of Niſi Prius ſhall award the Writ to the Biſhop (yet it ſeems the Writ is not returnable) And when it appears that the Record is ſent into C. B. it ſhall iſſue from thence. F. N. B. 38. in the New Notes there (M. H) cites Dyer 194.

6. Where Judgment is given in C. B. in a Quare Impedit, and a *Writ of Error* is brought, the Court of C. B. may award a Superſedeas to the Writ, which had been awarded there to the Biſhop, before the Writ, was delivered, and the King's Bench may award the like. Jenk. 206. pl. 36.

See (A. b. 2.) pl. 5.

(D. e) Writ to the Biſhop. *Return* by the Biſhop.

The Biſhop is not eſtopped to make ſuch Return, inaſmuch as he is not privy to the Verdict, or any Plea that confeſſes the Plenarty of the Church; *But if the Matter which he returns for his Excuſe* of not

1. **UPON a Writ to the Biſhop, for the Plaintiff awarded in a Suit of Quare Impedit between Common Perſons, if the Ordinary** returns, that **pending the Quare Impedit, and before Judgment** it was found by **Commiſſion of** Melius Inquirendum, **that the ſaid Advowſon, with other Lands of the Plaintiff, which were** held of the Queen in Capite, deſcended to the Plaintiff from his Father, and that the Plaintiff was, and yet is within Age and the Lands ſeiſed into the Hands of the Queen, by which the Queen preſented **to him one B. Clerk, the Church being then void, and for 3 Months before the Delivery of the Writ to him, whom he admitted &c. and ſo the Church is** now full, **whereby he cannot execute this Writ, D. 9. El. 260. 21. by the better Opinion of the Court, the Ordinary is not eſtopped to make this Return of the Title of the Queen, and the Plenarty of the Church of his Incumbent by any thing contained in the Record.**

ſerving 2 Writs *be falſe*, the Plaintiff may have his Quare Non Admiſit, and alſo Scire facias againſt the firſt and New Incumbent, to have Execution accordingly, D. 260. a. pl. 21. Paſch. 9 Eliz. Baſſet's —Watſ Comp. Inc. 8vo. 555. cap. 28. cites S. C. And the Doctor ſays he ſuppoſes that in this Caſe the firſt Clerk was not inducted, and ſo the Church remained open to the King's Preſentee, elſe his Inſtitution &c. muſt be void.

And the *Plaintiff was not permitted to relinquiſh the Scire facias, and tender Averment* againſt the Biſhop *That he did not reſign*;

2. A Man had Proximam Præſentationem by Grant; the Church voided, a *Stranger preſented*, and the *Grantee brought Quare Impedit, and recovered, and had Writ to the Biſhop*, who *returned that the Preſentee of the Diſturber reſign'd, and another is in*; and upon this the Plaintiff had *Scire facias to have Execution*, notwithſtanding that it be a ſecond Avoidance now, *becauſe he recovered the firſt Avoidance*, and the Covin of the Defendant ſhall not prejudice the Plaintiff. Br. Preſentation, pl. 33. cites 21 H. 7. 8.

for the Biſhop is only an Officer to the Court, and has made his Return, and has no Day in Court; *but he may have* his *Quare non Admiſit* againſt the Biſhop. Ibid.

Goldsb. 3. pl. 7. and 24. pl 4. S. C ——

3. In Quare Impedit it was found for the Plaintiff, and a *Writ* iſſued to the Biſhop, which was *not return'd*; *upon an Alias* brought, the *Biſhop returned that after Judgment* given *in the Quare Impedit, the ſame Incumbent*

bent, againſt whom the Action was brought, was Preſented, Inſtituted *and Inducted* into the ſame Church; *and ſo the Church is full.* The Queſtion was if this was a good Return, and it was often debated. It was adjudg'd that the Return of the Biſhop was not good, and he was fin'd 10 l. and a *Sicut alias awarded*, upon Pain of 100 l. 3 Le. 138. pl. 188. Mich. 28 Eliz. Moor v. Biſhop of Norwich. Watſ. Comp. Inc. 8vo. 549. 550. cites S. C.

4. In Quare Impedit Judgment was given for the Plaintiff, who was preſented to a Church void by Simony; whereupon a Writ was awarded to the Biſhop of Wincheſter, who returned, *That before the Writ received*, viz. Such a Day (which was after the Judgment) *the Church was full by Preſentation out of the Court of Wards, becauſe a Livery was not ſued.* It was ſaid theſe Returns of the Church being full before the Receipt of the Writs, are always rul'd to be inſufficient; for the Biſhop ought to execute the Writ when it comes to him; and cites 9 Eliz Dyer [160. pl. 2. Baſſet's Caſe] and 18 E. 4. 7. but ſays the Difference here is that the King preſented. And Harvey J. being only preſent, agreed that the Judgment ought to be executed. Whereupon it was agreed, that the Biſhop ſhould have Day to *amend his Return*, not that a new Writ ſhould be taken. Het. 130. Mich. 4 Car. C. B. Sir John Hall's Caſe. And it being mov'd again in the Term following, it was held by Yelverton and Richardſon, that the Biſhop ought to obey the King's Writ. Het. 131. S. C. Watſ. Comp. Inc. 8vo. 550. cap. 28. cites S. C.

5. If a *common Perſon recovers*, and has a Writ to the Biſhop, and the Ordinary *returns that it is full before of his own Preſentment*, it is good; As if one recovers, he may enter, if he will, without a Writ of Execution to the Sheriff. Het. 130. in Sir John Hall's Caſe.

(E. e) Writ to the Biſhop to Remove. *Who* ſhall be *Removed.* [*In what Caſes by Judgment without Writ.*]

1. IF a Man recovers againſt the Patron, leaving out the Incumbent, he ſhall not ouſt the Incumbent, becauſe he was not Party to the Suit; for he ſhall not be ouſted without Anſwer. * 9 H. 6. 56. b. Dub. † 19 H. 6. 68. b. S. P. 6 Rep. 51. b. in Boſwell's Caſe.—— S. P. Cro J. 93. in Caſe of Lancaſter v. Lowe.—S. P. Jenk. 281. pl. 7. ſays it was agreed by the Juſtices of both Benches—— S.P. Jenk. 234. pl. 36.——Incumbent that it is a *Stranger*, ſhall not be ouſted by Writ to the Biſhop *without Scire facias.* Sid. 93. Hall v. Broad.——S. P. Br. Quare Impedit, pl. 49. cites 7 H. 4. 34. 36. Per Huls, And if the Incumbent be ouſted, he ſhall *recover by the Spiritual Law.*——* Br. Ibid. pl. 6. cites S. C.———† Br. Quare Impedit, pl. 79. cites S. C. and P.

Brooke ſays, that it ſeems that where one *recovers in Quare Impedit againſt the Patron alone, without naming the Incumbent*, that this Recovery will hold him in Poſſeſſion, tho' the Incumbent ſhall not be removed, becauſe he recovers the Preſentation; quod ſufficit. Br. Quare Impedit, pl. 39. cites 47 E. 3. 4.

2. But if a Man recovers againſt the Patron, he ſhall ouſt the Incumbent preſented by the ſame Patron pending the Writ, becauſe the Recoveror could not name him in the Writ. 19 H. 6. 68. b. Co. 6. *Boſwell* 51. b. Br. Quare Impedit, pl. 79. cites S. C.— S. P. Jenk. 281. pl. 7. ſays it was agreed by the Juſtices of both Benches—S. P. Jenk. 234. pl. 36.—2 Inſt. 257.—Contra per Twiſden J. who ſaid, and it was not denied by any, that a Writ ſhall not go without a *Scire facias* againſt the Incumbent; for *Res inter alios acta* alteri Nocere non debet, and to ſtrip one of his Poſſeſſion without Action would be inconvenient; for he has no Day in Court, and it would encourage vexatious Actions; and he ſaid that Boſwell's Caſe had been often denied; and he knew that Writ of Error was brought to reverſe it, and Error in Law aſſigned, but the Writ abated; and Lord Coke in the End of the Caſe ſeems to confute the principal Judgment. Sid. 93, 94. in Caſe of Hall v. Broad.—Watſ. Comp. Inc. 8vo. 535. cap. 28.

3. If

If the Incumbent be preſented by the Defendant Pendente Brevi, he ſhall be removed, but not if he be preſented by a Stranger, without *Scire facias.* Cro. J. 94. Mich. 3 Jac. in Caſe of Lancaſter v. Lowe.

3. If a Stranger uſurps by Preſentment pending the Writ of Quare Impedit, his Clerk ſhall be removed by the Judgment in the Quare Impedit.

4. So if the King preſents without Title, pending a Quare Impedit againſt another Diſturber, and the Clerk of the King is Inſtituted and Inducted, yet he ſhall be removed by Judgment in the Quare Impedit, Co. 6. *Boſwell* 51. Reſolved.

Fol. 391.

Watſ. Comp. Inc. 8vo. 533. cap. 28. cites S. C.

5. So the King preſents to my Church, and the Clerk is Inſtituted, whereupon I bring Quare Impedit againſt the Incumbent only (as I ought) and pending this the King preſents another Clerk (the firſt not being Inducted) who is Inducted, yet this Clerk ſhall be removed by the Judgment in the Quare Impedit. Co. 6. *Boſwell* 51.

Cro. E. 44, 45. S. C. by Name of Beverley v. Cornwall. — Goldsb 103 to 105. pl. 9. S. C. — Ard. 179. pl. 215. S. C. Watſ. Comp. Inc. 8vo. 533. cap. 28. cites S. C.

6. If pending a pending a Quare Impedit againſt J. S. the Plaintiff be Outlaw'd, by which the King preſents, and his Clerk inſtituted and inducted, and after the Outlawry is revers'd, and the Plaintiff recovers in the Quare Impedit, he ſhall remove the Incumbent of the King; for now by the Reverſal of the Outlawry the Preſentment of the King was without Title. 30 El. B. R. *Cornwall's* Caſe. Adjudged. cited M. 3 Ja. B. R.

Watſ. Comp. Inc. 8vo. 531. cap. 28. cites S. C — Mo 571. pl. 784. S. C. Adjudged accordingly.

7. If two Patrons preſent, and the Biſhop refuſes both their Clerks, the one Patron brings Quare Impedit, and pending the Writ the other ſues a Duplex Querela in the Arches againſt the Biſhop, upon which Proceſs is made, and upon Default of the Biſhop the Archbiſhop receives the Clerk of this Patron, and he is inſtituted and inducted, and in by 6 Months, and after the Plaintiff in the Quare Impedit recovers, he by Writ to the Biſhop ſhall remove the Incumbent of the other Patron who comes in pending the Writ. Tr. 41 El. B. R. between *Bennet and Edwards* adjudged. M. 3 Ja. B. R. cited.

In this Caſe Anderſon and Windham Serjeants of the Queen, Serjeant Barber, Gerard Attorney General, and Bromley Sollicitor were of Opinion, that he is not removeable by this Judgment, becauſe he was not Party nor privy thereto, nor to the Writ; but Lord Dyer ſays it ſeems that this Opinion is not Law, tho' there were 20 Incumbents ſucceſſively, Pendente lite &c. D. 364. pl. 28.——S. C. Cited by Coke, who ſaid that he had known it to be adjudged according to the Opinion of Dyer. Roll. R. 213. Trin. 13 Jac. B. R. in Caſe of Harris v. Auſten.

8. If the King uſurps upon me, and his Clerk is Inſtituted and Inducted, againſt whom I bring a Quare Impedit, and pending the Writ the Incumbent reſigns, and the King preſents another, who is alſo inſtituted and inducted, and then I recover after ſix Months; in this Caſe, upon a Writ to the Biſhop for me, the laſt Incumbent of the King, tho' he has been in by 6 Months, ſhall be removed, becauſe he comes in Pendente lite. Contra. D. 21 El. 364. 28.

Quare Impedit againſt Parſon, Patron and Ordinary, and *pending Quare Impedit the Parſon reſign'd*, and the Ordinary gave Notice to the Patron, and afterwards the *Ordinary by Lapſe preſented the ſame Incumbent* that reſign'd; and afterwards the Plaintiff had Judgment; it was held that becauſe the ſame Incumbent is in by a *new Title*, viz. by Lapſe, and the ſame Perſon againſt whom the Recovery was had, and that appeared to the Court, he ſhould be removed. Per Windham. 3 Le. 138. pl. 188. in the Caſe of Moor v. Biſhop of Norwich, cites Lo. 5. E. 4. 115. 116. and refers to 9 Eliz. D. 260. & 21 Eliz. D. 364.——Watſ. Comp. Inc. 8vo. 531. cap. 28. cites S. C.——Watſ. Comp. Inc. 8vo. 556. cap. 28. cites S. C.

Cro. J. 93. S. C. by Name of Lancaſter v. Lowe.—— Watſ. Comp Inc. 8vo. 534. cap. 28. cites S. C.—

9. Pending a Quare Impedit againſt J. S. if a Stranger preſents a Stranger upon good Title, and his Clerk admitted, inſtituted and inducted, and after the Plaintiff recovers, yet he ſhall not remove this Incumbent. M. 3 Ja. B. R. *Boſwell's* Caſe. P. 1 Ja. B. Dubitatur 18 H. 7. Kell. 49. Per Curiam, becauſe he is a Stranger to the Recovery.

10. A. brings

A. brings Quare Impedit againſt B and then the *Clerk of C. who has the Right is admitted pending the Quare Impedit againſt B.* If *A. recovers*, his Clerk ſhall be admitted alſo, and the Clerk of A. and of C. ſhall try their Right in Ejectment, Treſpaſs or Aſſiſe. Jenk. 281. pl. 7.

10. So **if the** Stranger preſents the ſame Defendant upon good Title pending the Writ, **yet he ſhall not be removed, tho' he be adjudged a Diſturber upon the firſt Preſentment upon which the Quare Impedit is brought. M. 3 Ja. B. R.** *Boſwell's* **Caſe contra.** Watſ. Comp. Inc. 8vo. 534. cap. 28. cites S. C.

11. **If** A. ſeiſed of a Manor, to which **an Advowſon is appendant,** be outlaw'd in a Perſonal Action, **and** after the Church voids, and A. preſents **his Clerk, and the Biſhop upon a Diſturbance made by B. who pretends ſome Title thereto, refuſes to admit, whereupon** A. brings his Quare Impedit againſt the Biſhop and B. **and declares therein, and** after the King preſents B. upon the Outlawry **of A. upon which Preſentment B. is admitted, inſtituted and** inducted, **and** after the Outlawry is revers'd, **and all this appears upon Pleading; In this Caſe A. ſhall have Judgment againſt B. becauſe he comes in, pending the Writ, upon a Title which is avoided alſo pending the Writ; and alſo becauſe B. was not Incumbent at the Time of the Writ purchas'd, and ſo could not plead to the Title. Mich. 16 Car. B. between** *Risby and Powle.* **Adjudged per Curiam.** Watſ. Comp. Inc. 8vo. 533. cap. 28. cites S. C.

12. **In a Quare Impedit againſt B. if the Plaintiff be** nonſuited, **whereupon** B. has a Writ to the Biſhop, who was not Party to the **Writ of** Quare Impedit, **In this Caſe, tho' the** Biſhop **had** collated before the Writ ſerved, **yet inaſmuch as he had** not **collated** before the Judgment for the Writ **to the Biſhop, which was within the 6 Months, the Clerk of the Biſhop ſhall be removed. Co. Magna Charta. 363.**

13. **If a Man** recovers **in a Quare Impedit** againſt Patron and Incumbent within the 6 Months, **he ſhall remove the Incumbent. 19 H. 6. 68. b.** Fol. 392.

In this Caſe the Incumbent is removed *by the Judgment* without any Removal by Writ to the Biſhop. Roll. R. 212. in the Caſe of Harris v. Auſtin.

14. So **if a Man brings** Quare Impedit againſt Patron and Incumbent within the 6 Months, and recovers after the 6 Months **paſt, yet he ſhall remove the Incumbent. 39 E. 3. 15. Adjudg'd.** Watſ. Comp. Inc. 8vo. 532. cap. 28 cites S. C. —

But if the Quare Impedit be *brought after the 6 Months*, the Incumbent ſhall not be removed. Roll. R. 211. Harris v. Auſtin.

15. **In an Aſſiſe of** Darrein Preſentment or Quare Impedit againſt Patron and Incumbent brought after the 6 Months **paſt, if the** Defendants do not plead, **ſcilicet,** the Plenarty by 6 Months before the Action **brought, but pleads other Matter in Bar, upon which Iſſue is join'd and a Verdict for the Plaintiff, the Incumbent ſhall be removed upon the Judgment upon this** Verdict; **becauſe the Incumbent was Party to the Writ, and might have pleaded it, and did not do it. H. 9 Car. B. R. between the Biſhop of St.** *David* **and** *Lorte.* **Adjudg'd in Writ of Error upon a Judgment in an Aſſiſe of Darrein Preſentment in Wales; and the firſt Judgment affirmed, in which it was** not inquired when the Church became void, but Quod tempus Semeſtre modo tranſivit, **and yet for the Reaſon aforeſaid not material to be inquir'd; and alſo becauſe when the Jury found Quod tempus Semeſtre modo tranſivit and Damages to Half a Year, it** ſhall be intended that the 6 Months paſſed pending the Writ, **and not before the Action brought. H. 8 Car. B. Rot. 454.** Cro. C. 341, 348. Cort v. Biſhop of St. David, Owen and Pritchard. Adjudg'd. — Jo. 330, 332. Lort v. the Biſhop of St. David. Adjudg'd. — Watſ. Comp. Inc. 8vo. 532. cap. 28 cites S. C.

16. **If a Man brings a** Quare Impedit, the Church being full of his own Preſentment, **and the Title is** found for the Defendant, **yet he ſhall not remove the Clerk of the Plaintiff; becauſe he** might have abated

the Writ, **because the Church was full of the Preſentment of the Plaintiff himſelf the Day of the Writ purchaſed.** 19 H. 6. 68. b.

In Quare Impedit the *Plaintiff recovered*, and *the Church was full by Lapſe*;

17. Where a Man *recovers* in Quare Impedit, and a *Clerk is in by the Biſhop by Lapſe*, there he ſhall not be removed; therefore it is good to name the Biſhop alſo, as it ſeems, and then he ſhall not preſent by Lapſe. Br. Quare Impedit, pl. 79. cites 19 H. 6. 68.

and the Plaintiff pray'd Writ to the Biſhop at his Peril, and had it, and refuſed the Damages of 2 Years. Br. Brief al Eveſque, pl. 18. cites 24 E. 3. 35.

18. In Quare Impedit, if the *Biſhop ſays, That he did not preſent by Lapſe, and claims nothing but as Ordinary*, the Plaintiff may pray Judgment, and ſhall recover the Preſentment. Per Paſton. Markham ſaid, This is true, but he ſhall not have Writ to the Biſhop. Brook ſays, The Reaſon ſeems to be, inaſmuch as he ſhall not remove the Biſhop's Clerk. Br. Brief al Eveſque, pl. 14. cites 21 H. 6. 45. & 22 H. 6. 28, 29.

S P. For Lapſe ſhall not prejudice the King; for Nullum tempus Occurrit Regi.

19. *Where Title is found for the King after the Collation by Lapſe*, there the Incumbent ſhall be removed; but not without Quare Impedit taken, as appears there. Br. Encumbent, pl. 6. cites 14 H. 7. 21, 22.

Br. Quare Impedit, pl. 91. cites 14 H. 7. 21. 15 H 7. 6. Per Higham.

20. Where a *Patronage is gained by the Preſentation*, Admiſſion, and Inſtitution of a Clerk, the Patron muſt be named with the Incumbent in the Quare Impedit; and if the *Incumbent* be *not named*, he *ſhall not be remov'd*. Jenk. 200. pl. 18. ſays, It was ſo reſolv'd.

D. 353. b. pl. 30. Mich. 18 & 19 El. S. C. That B. being under the Age of 24. and a mere Layman, took a Benefice, whereupon a Citation was ſued out of the Delegates to deprive him, pending which R. W. brought Quare Impedit againſt the Biſhop of H. and Blower, naming him Clerk, and recovered by Default at the Grand Diſtreſs, and Writ to the Metropolitan to remove B. and admit the Clerk of R. W. whereupon one Griffin was admitted, inſtituted, and inducted. The Biſhop and B brought a Writ of Deceit in C. B. againſt R. W. and the Sheriff, and Summoners for Non Summons; R. W and the Summoners appear, but not the Sheriff. The Summoners being examined, denied that there was any ſufficient Summons, by reaſon of the Shortneſs of the Time and the Diſtance of the Place, the Benefice lying in Wales. R. W. pleaded in Bar of this Writ of Deceit, this Diſability of B. and Sentence of Deprivation by the Delegates, ſuppoſing thereby that he cannot be reſtor'd to his firſt Title and Intereſt in the Church &c. The Biſhop and B. demurr'd. And Note this was pleaded in Bar as well againſt the Biſhop as againſt B. and ſo not good; Whereupon Judgment was given, That the firſt Judgment be ſet aſide, and the Plaintiffs reſtor'd to all which they loſt &c. For the *Incumbency is not in Queſtion, but the Diſturbance of the Plaintiff in the Quare Impedit* to preſent to the Church, which was void by the Suppoſal of the Writ; and the Matter of *the Deprivation and Removal of B. from the Church is not in Queſtion by this Recovery in Quare Impedit by the Defendant, by which the*

21. *R. W. and J. P. brought* a Writ of *Error* againſt the Biſhop of H. and Blower *upon a Recovery* had *in a Writ of Deceit by the ſaid Biſhop and Blower againſt the ſaid R. W. and J. P. for that* the ſaid *R. W. had* before *brought a Quare Impedit againſt* the ſaid *B. and the Biſhop, and* had *recovered againſt them by Default, whereupon R. W. had a Writ to the Metropolitan to admit his Clerk, and in the Writ of Deceit Judgment was given for the Plaintiffs*; for it was found, that the Summons was the Friday to appear the Tueſday after, and ſo an *inſufficient Summons*; and in that Writ of Deceit the Defendants W. and P. pleaded, That the Incumbent was deprived of his Benefice in the Court of Audience, which Sentence was affirmed upon Appeal before the Delegates; and notwithſtanding that Plea, Judgment was given againſt W. and P. Defendants in the ſaid Writ of Deceit; And upon that Judgment this Writ of Error was brought, And among other Things it was *aſſigned for Error, That upon Suggeſtion* made *after Verdict, That B. was Incumbent and in, of the Preſentment of the Lord Stafford, and that he was removed, and that Griffin was in by the Recovery* in the Quare Impedit *by Default, a Writ to the Biſhop was awarded without any Scire facias againſt Griffin*; for he is Poſſeſſor, and ſo the Statute of 25 E. 3. calls him, and gives him Authority to plead againſt the King, and every Releaſe or Confirmation made to him is good. But to this it was anſwer'd, That as to the Scire facias there needs none here againſt the *new Incumbent*, for he comes in *pendant the Writ*, and that appears by the Record; but if he had been in before the Writ brought, then a Scire facias would lie, and cited 9 H. 6. It was adjourned. Le. 293, 294, 295. pl. 402. Hill. 27 Eliz. B. R. Williams v. Blower.

the Plaintiffs in this Writ of Deceit were damnified &c. And upon this Judgment R.W. brought Writ of Error, and the Judgment was revers'd; but not for any Matter in Law. D. 353. b. 354. a. pl. 30, 31. Mich. 18 & 19 Eliz. Blower v. Williams. — Ibid. Marg. 354. a. pl. 31. says, So Note, That he was *not restor'd to the Incumbency* again *in the Writ of Deceit, because he did not lose it by the Supposal of the Writ of Quare Impedit, which supposed the Church to be void.*

22. If the Clerk *comes in under the Title of the Plaintiff, and since the same*, he shall be removed; but if he come in *by Title Paramount*, he shall not be removed. And for that the Clerk comes in *hanging the Writ*, it seems that he shall be removed. Per Anderson Ch. J. Quod Periam J. Concessit. Goldsb. 105. in the Case of Beverley v. Cornwall.

Whatever Person is *presented and admitted after the Action brought*, unless where

the *Title of the Patron* is *Paramount the Title of the Plaintiff*, such Presentee shall be removed upon a Recovery by the Plaintiff. Per Anderson Ch. J. 3 Le. 139. pl. 188. Mich. 28 Eliz. C. B. in the Case of Moore v. the Bishop of Norwich. — S. C. & P. by Anderson. Goldsb. 3. pl. 7.

23. If the *King recovers* his Presentment unto a Church, *and has a Writ* to the Bishop &c. *to remove the other's Incumbent*, for which the *Incumbent sueth an Appeal* in the Archbishop's Court &c. by reason whereof the *Archbishop sendeth a Prohibition* that he do not admit the King's Clerk *pendant the Appeal* &c. then the *King shall have a Writ* directed *to the Archbishop* and his Officers *to take off his Inhibition*, and that they do nothing, nor suffer any Thing to be done by others, in Derogation of the Crown or of the King's Right; *and* shall have *another* Writ *against the Incumbent*, that he do not prosecute such Appeals, Provocations, or other Process or Impediments. *And* also the King may have an *Attachment* directed unto the Sheriff *against such Incumbent, if he go on* there after such Prohibition directed unto him. F. N. B. 43. (A)

And it appeareth by the Register, That another *Common Person* who recovereth his Presentment, or hath Title to present, *shall have such Writs* of Prohibition unto the Spiritual Judges

or the Party, that they shall not proceed, or prosecute such &c. and also Attachment against them if they do &c. F. N. B. 43. (B)

24. *Lecturer* was removed *for not officiating in Person as the Foundation required.* MS. Tab. &c. cites 1720. Philips v. Walter.

For more of Presentation in General, See **Advowson, Collation, Simony,** and other proper Titles.

For Prescription see Custom.

(A) Presumption.

see 4. Term Rep. 682. 1. Vent. 257. 2. Vern. 1129. 2. Burr. 1065. for presuming conveyances,

1. IF the *Eldest Son be beyond Sea at the Death of the Ancestor*, and the *youngest enters into the Land*, he is not accounted in Law *a Disseisor*; because the Law presumes, that he preserves the Possession for his Brother; But if upon his Brother's Return he keeps him out of Possession, then the Law looks upon him as a Disseisor. Per Doderidge. Lat. 68. Pasch. 1 Car. in Mayow's Case.

2. *Casual* and Accidental Things are not to be presum'd, unless alleg'd. Arg. Hard. 81. Mich. 1656. in the Case of the Attorney General v. Buckeridge.

3. Powel Justice says, he does not know any Case where a Man shall be made a *Tortfeasor* by Presumption only. 2 Lutw. 1568. Mich. 4 W. & M. in Case of Gwin v. Pole.

4. Where the *Law intrusts Persons* as (Justice of Peace) *with the Execution of a Power*, the Court ought to give Credit to them in the Execution of that Power; tho' if they make a false Return whereby the Party

Party and Juſtice are abuſed, they may be puniſhed. 10 Mod. 382. Hill. 3 Geo. B. R. the Queen v. Simpſon.

5. *Odioſa & Inhoneſta non ſunt in lege Præſumenda & in facto quod ſe habet ad Bonum & Malum magis de Bono quam de Malo præſumendum eſt.* See Maxims.

6. *Semper præſumitur pro Sententia & Pro Legitimatione puerorum.* See Maxims.

Stabit Præſumptio donec probetur in Contrarium. See Maxims.

For more of Preſumption in General, See **Length of Time**, **Trial**, **Evidence**, and other proper Titles.

Privilege.

(A) Of Officers in Courts [from *Offices and Duties*]

So of *a Clerk* of B. R. Palm 392. Paſch. 21 Jac. Stamp's Caſe.

1. IF an Attorney of B. R. be made a Churchwarden of a Pariſh, he ſhall have a Writ of Privilege out of B. R. ſhewing his Privilege to be diſcharged thereof for his Attendance in the ſaid Court. P. 14 Car. B. R. *Felix Wilſon* being an Attorney of B. R. was made Churchwarden of Hanwell, and refuſed it, and he was ſued in the Spiritual Court to execute the ſaid Office, and Prohibition granted.

S. P. of a Clerk of the Court; and it was agreed by the whole Court, that for all Offices which require his perſonal and continual Attendance, as Churchwarden, Conſtable, and the like, he may have his Privilege; but for Offices which may be executed by Deputy, and do not require Attendance, as Recorder, and the like, (from which the Juſtices themſelves ſhall not be exempt) for ſuch he ſhall not have his Privilege. Mar. 30. pl. 65. Trin. 15 Car. Anon.

2. Tr. 15 Car. B. R. Mr. *Barker's* Caſe being elected Churchwarden of Aldermary in London, and ſuch Writ granted.

3. Clerks of the King's Courts are not privileged from Watch and Ward, for they may find others to do it for them, and there needs not any Perſonal Attendance. Tr. 15 Car. B. R. in the ſaid Caſe of *Barker*, ſaid by Juſtice Jones.

See Noy. 112. Corner's Caſe, but it ſeems ſtrangely reported.

4. An *Attorney* of B. R. was elected *Tythingman* of Taunton, in which Town a *Cuſtom* is pretended, *That every one ſhould be* Conſtable, or Tythingman *in his Turn, according to their ſeveral Houſes*, and he having *purchaſed two Houſes* in the Town was choſen Tythingman at the Leet there; He brought his Writ of Privilege to be diſcharged; becauſe he is to be attendant in B R. It was moved, that it might not be allowed, becauſe here was a ſpecial Cuſtom, and ſhould an Attorney purchaſe many Houſes, there might not be Perſons enough to do the Service, as here he has actually purchaſed Seven. But all the Court held, That this cannot be a good Cuſtom; For then a Woman, being an Inhabitant in one of the ſaid Houſes, it might come to her Courſe to be Conſtable, which the Law will not allow. It was ordered, that he be diſcharged. Cro. C. 389. Mich. 10 Car. B. R. Prouſe's Caſe.

5. S. an *Attorney* of B. R. having Land within the Manor of H. in the County of Middleſex, Ratione tenuræ ought to ſerve *as Reeve* when elected, and he being now elected, prayed a Writ of Privilege that he ſhould *not* be *compelled to gather the Rents of the Lord*, and to ſerve in that Office; Per Keiling Ch. J. this Writ lies here, and is a ſtronger Caſe than **Prouſes's** Caſe Cro. Car. 389. Twiſden J. ſaid, A Tenure may be created to ſuch Intent to collect the Rents of the Lord; Et Adjornatur. Raym. 179. Paſch. 21 Car. 2. Stone's Caſe.

Though it was objected, that he was a Copyholder, and by Cuſtom [ought] to ſerve, as a Thing incident to his Eſtate created by the ſame Cuſtom, and though it was alſo ſaid, that he might execute this by Deputy, yet the Court granted the Writ; For to the 1ſt. it was ſaid, that the Privilege of this Court is as ancient as the Cuſtom of any Manor; and to the 2d. he is reſponſible for his Deputy. Lev. 265. S. C.——— Vent. 16. & 29. S. C.

6. Such as have Privilege of Chancery ſometimes have a Superſedeas of Privilege granted them as a Protection; the moſt extenſive of which Sort contains both an *Injunction and Superſedeas*, directed to all and ſingular Juſtices, Judges, Sheriffs &c. injoining them *not to moleſt or vex a Clerk* of one of the ſix Clerks of this Court in his Privileges, and (amongſt other Things) not to put, *or chuſe him into any Office of Collector, Churchwarden*, or other common troubleſome Office; and if any Diſtreſs has been made upon him on that Account, without Delay to releaſe it. P. R. C. 287, 288.

Curſ. Canc. 495. cap. 18. S. C.

(A. 2) Of other Perſons.

As to privilege from ſervice of Office of Sheriff &c. ſee tit. Sheriff in Bac. Abr.

1. SIR W. H. was ſeiſed of the Manor of R. in Eſſex, in which he preſcribed to have a Leet. A an *Alderman of London lived within the Precincts thereof, and was preſented* by the Homage *to be Conſtable*, and this Preſentment was removed by Certiorari into B. R. and the Alderman was diſcharged; becauſe he was obliged as Alderman to be preſent at London for the Government of the City. Jo. 462. pl. 4. Trin. 16. Car. B. R. Alderman Abdy's Caſe.

And though it was ſaid, That he might execute it by Deputy, and his perſonal Attendance is not requiſite by the Cuſtom of the Manor, yet Non Allocatur; And thereupon a Writ was awarded to be directed to the Lord of the Manor to diſcharge him. Cro. C. 585. pl. 3. 16 Car. B. R: S. C.

2. *Captain of the Guards* is not privileged from being *Reeve* of a Manor. Sid. 355. Hill. 19 & 20 Car. 2. Sir Walter Vane's Caſe.

Lev. 233. S. C.

3. A *Doctor of Phyſick* was *choſe Conſtable*, and the Court thought Perſons of Quality ſhould be privileged againſt ſuch Offices, and therefore made a Rule that he ſhould be diſcharged of the ſaid Office Niſi &c. Sid. 431. Mich. 21 Car. 2. B. R. The King v. Pordich.

4. A Writ of Privilege was prayed to excuſe one from the *Office of Expenditor in the Level* of Romney-Marſh; 1ſt. For that he was an *Eccleſiaſtical Perſon*. 2dly, Becauſe all the Land he has in the Marſh is in Leaſe for 99 Years; The Writ was granted by Rainsford and Moreton J. they only being in Court, Moreton for the firſt Reaſon, and Rainsford for the 2d. Lev. 303. Mich. 22 Car. 2. B. R. The Archdeacon of Rocheſter's Caſe. Dr. Lee's Caſe.

Vent. 105. S. C. by the Name of Dr. Lee's Caſe. ———S. C. Mod. 282. ſays it was objected, That the Archdeacon's *Predeceſſors did execute this Office*; and the Court ordered, that Notice ſhould be given, and Cauſe ſhewn why the Doctor ſhould not do the like; But afterwards the ſaid two Judges ruled, that he ſhould be privileged; And it is there ſaid, that the Land being in Leaſe, it ſeems that the Tenant, if any, ought to do the Office. And the Writ was granted.——— S. C. cited 6 Mod. 140. Paſch. 3 Ann. B. R.

5. *High Conſtable* was diſcharged from ſerving the Office of *Overſeer of the Poor*, during his High-Conſtableſhip. 2 Jon. 46. Paſch. 28 Car. 2. High-Conſtable of Wanſteed's Caſe.

6. The *King's Officers*, though they may execute the ſame by Deputy, are privileged from Pariſh Offices, though they drive Trades in the ſame Pariſh, and ſuch Privilege is *grantable out of Chancery* as well as the Exchequer. 2 Chan. Rep. 196. 32 Car. 2. Raymond v. Pariſh of St. Botolph's Aldgate.

7. Note, a Writ of Privilege was moved for to have a *Clergyman*, who appeared to have *no Cure of Souls*, privileged from the Office of *Overſeer of the Poor*. And though Holt Ch. J. ſeemed againſt it, becauſe he thought their Privilege of Exemption was only extendible to their Spiritual Revenues, and if in any Caſe they were Perſonal, it was only from Common Law Offices, and ſpecially if they were without Cure, as here, yet the other three Juſtices were ſtrongly againſt him; But however, for his Lordſhip's Satisfaction, deſired it ſhould be ſtirred again. 6 Mod. 140. Paſch. 3 Ann. B. R. Anon.

(B) Privilege. *For what Cauſes.*

1. **If a Man be** arreſted coming to Weſtminſter to anſwer an Action **there, he ſhall have the Privilege.** 2 H. 7. 2. b. 9 H. 6. 44.

But if he was not coming to the Court at Weſtminſter it is otherwiſe; For if he comes to London in the Vacation meſne between the being ſued in Bank and the Arreſt in London, he ſhall not have the Privilege. Br. Privilege, pl. 34. cites 2 H. 7. 2 ——One that was coming to the Court of B. R. to attend upon his Cauſe, was arreſted as he was coming, and was forced to put in Bail; but upon a Motion, and making it ſo appear to the Court, he and his Bail were both diſcharged. Hill. 22 Car. And the Party that arreſted him had been alſo puniſhed, had he not pretended that he knew not that the Party came about his Buſineſs depending in the Court; for the doing of this was an Affront to the Court, as well as an Injury to the Party arreſted. L. P. R. 2 Vol. 369.——But to have the Protection of the Court, the Party muſt appear in Perſon, that the Court may examine him, and that they may be ſatisfied upon his *Oath, that he was either proſecuting or defending ſome Suit* pending *in that Court*, when he was arreſted. Gilb. Hiſt. of C. B. 167.

2. So **if he be arreſted** returning from **the Court he ſhall have the Privilege,** 2 H. 7. 2. b.

S. P. Gilb. Hiſt. of C.B. 167. cites Fitzh. Corpus cum Cauſa. 151. S.C.

3. **If a Man be** ſued in Bank, **and he** goes to another Place by Leave of the Court to inquire for Evidences concerning this Matter **which he has there, he ſhall have the Privilege if he be arreſted there.** 13 H. 4. 1. b.

S. P. Gilb. Hiſt. of C. B. 167.

4. But **in this Caſe, if he has** not Leave of the Court **to go there, he ſhall not have the Privilege.** 13 H. 4. 1. b.

Br. Privilege, pl. 21. cites S. C. & P. but

5. **If the Defendant, in a Writ of Treſpaſs, be arreſted** in another Court, in coming at the Return to anſwer the Plaintiff **he ſhall have his Privilege.** 4 H. 6. 8.

ſays, that he was diſmiſſed till they were adviſed, quod nota, but that by 2 H. 5. cap. 2. it is enacted, that he ſhall be remanded where he ſhall remain, and ſhall not be diſmiſſed.

In ſuch Caſe he ſhall have his Privilege if arreſted in a Town Corporate at ſuch Diſtance; For it may be that he went thither to buy a Horſe, or other Things neceſſary for his Journey. Br. Privilege, pl. 4. cites S. C.

6. **If a Man be arreſted upon a Writ returned in Bank, if he** goes 40 Miles out of his Way **to another Place** to buy a Horſe to come to London, **and he is there arreſted, yet he ſhall have his Privilege.** 9 H. 6. 7. b.

7. If

7. If I have an Action pending in B. and my Goods are arreſted in London, which ought not to have Privilege, If I render my Body Voluntarily to free my Goods, I ſhall not have the Privilege, becauſe it was my own Act to render my ſelf. 20 H. 6. 3. b. Adjudged. Br. Privilege, pl. 6. cites S. C. If *in Plaint* againſt a Man in *London*, his *Goods are attached by the Cuſtom*, and *he renders his Body to Priſon to diſſolve the Attachment*, yet he ſhall have the Privilege of the Bank, if he was impleaded there before, notwithſtanding that the Render to Priſon was his own Act; For he was in by virtue of the Plaint. Br. Privilege, pl. 29. cites 38 H. 6. 12. —— S. C. cited 8 Rep. 143. b. in Dr. Drury's Caſe. — See pl. 23.

8. If a Man be arreſted in going to London, tho' he has an * Action pending in Bank, yet if he was not coming to this Court, he ſhall not have the Privilege. 2 H. 7. 2. See pl. 1. Fol. 273.

9. If the Plaintiff, in a Suit in Bank be arreſted in London by Defendant upon a Plaint there, before the Return of the Writ in Bank, he ſhall have his Privilege. 11 H. 6. 22. 52. A. impleaded B. in C. B and *had Day. to appear*,

and the *Defendant arreſted the Plaintiff coming toward the Court to proſecute his Suit*, the Plaintiff ſhall have Privilege for his own Suit. Br. Privilege, pl. 57. cites 11 H. 6. 27.

10. If a Man, having an Original depending returnable in Bank, comes to London 3 Weeks before the Return for this Cauſe and no other, and there is arreſted, he ſhall have the Privilege. 11 H. 6. 3. But if he comes ſo long before the Time, becauſe he is ſick, to be refreſhed, he ſhall have the Privilege. 11 H. 6. 52. This ſeems miſprinted, and the Year Book is, that if the Plaintiff was arreſted 2 Days

before, it ſhall be intended to prevent his keeping of his Day, and therefore ſhall have his Privilege; but if it was 2 or 3 Weeks before the Day it would be otherwiſe, For then it could not be intended, That his Coming was to keep his Day, unleſs other Cauſe was ſhewn, as that he had been ſick, and that his Coming ſo long before, was to refreſh himſelf, 11 H. 6. 52. a. pl. 16. but I do not obſerve the Point mentioned at 11. 6. H. 3. —And ſee pl 12, 13.

11. But if a Man does not come to London to take a Suit at the Common Law, but is there remaining, tho' he has an Action pending in Bank, yet he ſhall not have the Privilege if he be arreſted there. 11 H. 6. 3.

12. This is true, if he be arreſted 2 or 3 Weeks before Return of the Writ in Bank; For then he could not be in coming to the Bank. 11 H. 6. 52. See pl. 10. It appeared by Examination, that Defendant

in Bank was arreſted in London in the Vacation, when he need not come about his Suit at Weſtminſter, and therefore it was the Opinion of the Court that he ſhould be remanded. Br. Privilege, pl. 31. cites 39 H. 6. 50.

13. But if he was arreſted there but 2 Days, or ſuch little Time before the Return, he ſhall have his Privilege, tho' he be ſtaying there; For by this Arreſt he cannot keep his Day in Bank. 11 H. 6. 52. See pl. 10. One impleaded in Bank came to London 12

Days before the Term, and is arreſted in London; Upon Oath that he came ſo long before the Term, *to retain Council* in his Matter in Bank, the Privilege was allowed him. Br. Privilege, pl. 28. cites 38 H. 6 4. —— In Debt, *Exigent* was *awarded in Trinity Term returnable in Hillary Term*, and Meſne, viz. *in Mich. Term the Defendant came to London, and was arreſted, and prayed Privilege*; Per Brian Ch. J. he ſhall have the Privilege, if he came for Counſel in the ſame Cauſe; And therefore the Plaintiff in London took out an Original in Bank againſt the Defendant, and he was compelled to anſwer to it immediately, and had Privilege; quod nota. Br. Privilege, pl. 45. cites 20 E. 4. 12.

14. A Man who *dwelt in London* was *impleaded at Weſtminſter, and after* was *arreſted in London*, and was diſmiſſed by the Privilege, tho' he dwelt in London, as well as if he had been arreſted in London coming out of the Country to Weſtminſter, to have appeared at a Suit there; But Brook ſays it ſeems that this was *in the Term*; For contra, it ſeems if he had been arreſted in the Vacation. Br. Privilege, pl. 55. cites 11 H. 6. 52.

15. A

See the Notes at pl. 17.

15. A Man *ſued a Replevin*, and the *Defendant affirmed Plaint in a Baſe Court by Covin to have the Goods diſtrained to be attached, ſo that Replevin ſhould not be thereof made*; and the Sheriff returned it, and the Plaintiff prayed Superſedeas for him and his Goods, becauſe the Court of *Bank has the elder Seiſin by the Replevin*, and he could not have Privilege by Superſedeas for his Goods, but only for his Body; But per Laicon he ſhall have it for both; but by ſeveral, the Plaintiff may have Certiorari for all if he will, and ſee elſewhere, that the Attachment ſhall not diſſolve the Diſtreſs taken before. Br. Privilege, pl. 51. cites 16 E. 4. 8.

The Plaintiff *coming up to follow his Suit after his Year after his Bill exhibited*, was arreſted in London, and had his Privilege. Toth. 218. cites 1588. Marſhal v. Moor —— S. C. cited P. R. C. 285. it appearing, that he came up only for the following his Suit. —— Curſ. Canc. 496. S. C.

16. Where *Matter is continued for a Year*, by reaſon that it is in *Arbitrement*, a Man ſhall have Privilege. Per Brian. Ch. J. Br. Privilege, pl. 45. cites 20 E. 4. 12.

And per Sulliarde, if a Man *claims the Privilege by Action brought by himſelf*, he ſhall be *examined whether it be brought by Covin.* Ibid. ——— Where the Action is brought *in the ſame Term*, he ſhall be examined of the Covin; but if it be in a former Term, the Record ſhall be credited, and the principal Caſe was put off &c. therefore quære. Ibid.

17. A Man brought *Corpus cum cauſa, to be removed out of London*, becauſe he is *indicted of Treſpaſs in B. R.* And by the beſt Opinion he ſhall have the Privilege. Br. Privilege, pl. 47. cites 2 R. 3. 16.

18. He who *has Attorney, and comes to commune with him*, and is arreſted in London ſhall have Privilege. Br. Privilege, pl. 34. cites 2 H. 7. 2. Per Townſend.

19. *And* he who *comes to a Vill to merchandize*, and after has Notice that *Pluries Capias is iſſued againſt him*, and it is returned, and that if he does not appear Exigent ſhall iſſue, there if he would appear, and in the mean Time he is arreſted, he ſhall have the Privilege. Per Townſend; quære. Br. Privilege, pl. 34. cites 2 H. 7. 2.

So of a *Servant or Farmer*, who comes to bring Money to his Leſſor, who is in Suit, to maintain the Suit. Ibid.

20. Note, that where *Ceſty que Uſe* comes to Weſtminſter to maintain the Suit of his Feoffee in Uſe, and he is arreſted, he ſhall have the Privilege. Br. Privilege, pl. 1. cites 27 H. 8. 20.

So in Debt againſt Baron and Feme, Superſedeas of Chancery was *caſt for the Baron*; and becauſe the Feme cannot anſwer without her Baron, and they are one Perſon in Law; therefore Per Cur. It ſhall ſerve for both. Br. Privilege, pl. 17. cites 22 H. 6. 38.

21. If the *Baron alone* be *impleaded in C. B.* and in coming to defend the Suit *he and his Feme are both arreſted*, they ſhall both have the Privilege. D. 377. Trin. 23 Eliz. Anon.

P. R. C. 289. ——Curſ. Canc. 496. cap. 18.

22. The Defendant, *coming to execute a Commiſſion*, was arreſted, and had a Corpus cum Cauſa to ſet him at Liberty. Toth. 218. cites Trin. 23 Eliz. Jackſon v. Vaughan.

23. Action of *Battery* was brought *in C. B.* and upon Not Guilty pleaded, the Parties were at Iſſue; and when the *Jury went* out *to conſider of their Verdict*, the *Defendant caus'd the Plaintiff to be arreſted* by Proceſs out of B. R. *for a Battery done* to him *before* by the Plaintiff. The Court being inform'd of this, would have diſcharg'd the Plaintiff, but that he having *put in Bail*, they ſaid they could not, but commanded the Plaintiff in this new Action to releaſe his Arreſt, which he did; and they ſet a Fine on him, which he immediately paid in Court. And they ſaid, that the Suitors ought ſafely to come and go by the Privilege of the Court, without Vexation elſewhere. Goldsb. 33. pl. 8. Mich. 29 Eliz. Lea's Caſe.

24. A Defendant *coming* up *upon an Attachment* would have had his Privilege *againſt a Citation in the Arches*, and could not; becauſe a Citation is no Stay of his Perſon. Toth. 218. cites Paſch. 30 Eliz. Cook v. Dix.

25. The Plaintiff was arreſted when he *came up to examine Witneſſes*, and was diſcharged by Superſedeas of Privilege. Toth. 218. cites Trin. 1591. or 32 Eliz. fol. 738. Barnardiſton v. Bawd. P. R. C. 289.—— Curſ. Canc. 496. cap. 18.

26. The Plaintiff was releas'd out of Priſon, tho' detained at other Men's Suit, becauſe he was *arreſted* when he was *going about his* Buſineſs or *Suit in Chancery*. Toth. 211. cites 8 Car. Smith v. Garby.

27. When a Perſon complains to the Court of B. R. of a Miſdemeanor, and it is adjudged that his *Complaint is vexatious*; this Court will not allow the Privilege of protecting him in his Return. 11 Mod. 79. pl. 13. Paſch. 5 Ann. Anon.

(C) *For what Things. And in what Action.*

1. **If a Man was** condemned in London, and taken before the Writ purchas'd in Bank, **he ſhall not have his Privilege, but ſhall be remanded.** 10 H. 6. 10. b.

2. **If a Man, who** comes **to London** to anſwer an Original **againſt him returnable** in Bank, **be**, before the Return, arreſted upon a Plaint in London prior to the Date of the Writ, **he ſhall not have the Privilege.** * 9 H. 6. 54. b. 10 H. 6. 10. b. **For he ſhall not be diſcharged.** * If after his being impleaded in Bank, he is arreſted in London upon a Plaint, he ſhall have the Privilege, tho' the Plaintiff be *Nonſuited or Eſſoigned*, or will not appear, ſo that the Writ be returned, and the Teſte of the Writ prior to the Plaint upon which he is arreſted; but if the Writ be not returned, he ſhall not have the Privilege; for the Court has not any Record; but upon *Plaint affirmed before the Teſte of his Writ*, he ſhall not have Privilege. Br. Privilege, pl. 5. cites S. C.

3. So **if the** Plaint was the 4th Day of October, and the Writ **bore Date** the 1ſt Day, **yet if it be found upon Examination that the Writ was** delivered the 8th Day, **he ſhall not have the Privilege.** 9 H. 6. 54. b.

4. **If a Man,** coming to anſwer an Original, **be** arreſted upon a Plaint in London ſubſequent to the Date of the Writ, but before **the** Return, **if the** Original be after returned, **he ſhall have his Privilege, tho' the Plaintiff in the Original has not yet done any Thing in the Writ; for by the Return of the Writ the Original was pending from the Date, ab Initio.** 9 H. 6. 54. b. **Curia.** 10 H. 6. 10. b. If a Man has a Suit depending in B. R. and be coming to Town to proſecute or defend it here, he cannot be ſued elſewhere; Per Twiſden. Mod. 66. Mich. 22 Car. 2. B. R. Anon.

5. So **ſhall it be tho' the** Plaintiff in the Original **be** outlaw'd at the Return. 9 H. 6. 55. b. **Curia.**

6. But **if a Man** ſues an Original **againſt me,** but does not deliver the Writ to the Sheriff, nor any Writ is returned; **and I ſuppoſing the Writ to be returned,** come to anſwer it, and in coming am arreſted, **I ſhall not have the Privilege; for here no Writ is depending againſt me.** 9 H. 6. 54. b.

7. **If I am arreſted** in an inferior Court coming to anſwer a Capias ſued **againſt me in Bank, I ſhall have the Privilege, tho' the Writ be** returned Non eſt Inventus. 20 H. 6. 4.

Br. Privilege, pl. 55. cites S. C. — pl. 24. cites 9 E. 4. 47. That it was touched there, that he ſhould have Privilege there for his Horſe and *Servant* who comes with him. — Ibid. pl. 27. cites 21 H. 7. 39. That he ſhall have Privilege for his Horſe and other Goods ——— It was ſaid by Aſcough and Fulthorp, When a Man comes to London about his Suit, He and his Horſes and his Goods neceſſary to his Journey ſhall be privileg'd. And by Newton, he ſhall have the Privilege for all his Goods brought with him, tho' he brings Surpluſage, and ſo of all his other Goods, Quære inde; And ſo after he was remitted as before. Br. Privilege, pl. 6. cites 20 H. 6. 4.

8. **A Man who is** coming to proſecute a Suit **ſhall have the** Privilege for all his Goods neceſſary * for the Journey. 20 H. 6. 4.

* S. P. And alſo for his *Expences*. Br. Privilege, pl. 29. cites 38 H. 6. 12.

Br. Privilege, pl. 55. cites S. C. — pl. 8. cites 34 H. 6. Per Priſot. Quod non Negatur. [And ſee the Notes at pl. 8. Per Newton.]

9. So **if he brings with him** more **Goods** than are neceſſary, (**yet if he brings them with him** for Defence of the Suit) **he ſhall have the Privilege for them.**

Br. Privilege, pl. 55. cites S. C. — Ibid. pl. 6. cites S. C. ——— pl. 8. cites 34 H. 6. 15. Per Priſot. ——— Br. Privilege, pl. 29. cites 38 H. 6. 12. —— S. P. Gilb. Hiſt. of C. B. 198.

10. But **he ſhall not have Privilege for** ſuch **Goods as he carries with him** to merchandiſe. 20 H. 6. 4.

Fol. 274. Br. Privilege, pl. 11. cites S. C. — Br. Nonſuit, pl. 13. cites S. C. —— Gilb. Hiſt. C. B. 168. cites S. C. If it appears to the Court, that it is the ſame Plaintiff, Defendant and Action, the Defendant ſhall be diſcharg'd; becauſe at the Time of ſuing out the 2d Action, they were legally attach'd in the ſuperior Court.

11. **If** Defendant **in an Action of Debt** in Bank **be** arreſted in London for the ſame Debt by the ſame Plaintiff, **he ſhall have the Privilege; and when he comes into Bank upon the** Habeas Corpus, **tho' the Plaintiff be** Nonſuited, **yet he ſhall be diſmiſſed.** 12 H. 4. 21.

12. He who *rides with his Maſter* to London, *to bring back his Horſe*, ſhall have the Privilege. Br. Privilege, pl. 40. cites 10 E. 4. 4.

13. If a Man comes to *ſue Original*, and is arreſted before he can ſue it, he ſhall be examined, and ſhall have the Privilege, tho' no Plea be pending. Br. Privilege, pl. 1. cites 27 H. 8. 20.

14. A *Clerk of B. R. was ſued*, after the Statute of 21 Jac. cap. 23. *in an inferior Court*, for a Sum *under 5 l.* And Per Jones and the Chief Juſtice, a Writ of Privilege ſhall be allow'd; for the Statute, being general, never intended to take away the Privilege of the Clerks of this Court. And it was Rul'd accordingly. Palm. 403. Paſch. 1 Car. B. R. Armington's Caſe.

15. A Serjeant at Law was Plaintiff in the Admiralty, and the Defendant there mov'd for a Prohibition in B. R. The Court doubted, Whether Privilege ſhould be granted *in Prohibition*, Ideo Quære. Sid. 65. pl. 38. Mich. 13 Car. 2. B. R. Serjeant Morton's Caſe.

Gilb. Hiſt. of C. B. 168. S. P. For

16. If a Man comes to B. R. *as a Witneſs*, he is protected *eundo & redeundo*. Per Twiſden. Mod. 66. Mich. 22 Car. 2. B. R. pl. 13. Anon.

ſince they are oblig'd by the Proceſs of the Court to appear, they will not ſuffer any one to be moleſted whilſt he is paying Obedience to their Writ.

A Witneſs was arreſted as he was attending the Court to give Teſtimony in a Cauſe. Roll. Ch J. bid them take a Superſedeas, and ordered the Parties to ſhew Cauſe why an Attachment ſhould not go againſt them who arreſted him. Sty. 395. Mich. 1653. Anon.

If a Witneſs coming to teſtify in a Cauſe in Middleſex be arreſted in London by one knowing the Cauſe, he has no Remedy but by Habeas Corpus to examine and deliver him thereby; but if there be any Contempt by the Officer &c. an Attachment may afterwards be awarded againſt him; for they are as well to have Privilege as the Parties. Keb. 220. Hill. 13 Car. 2. Vandevelde v. Luellin.

S. C. 3 Lev. 398. Adjudged that the Writ

17. In Debt, upon a Penal Statute, Qui tam &c. againſt an *Attorney* in C. B. the Queſtion was, If he ſhall have his Privilege or no? And ruled upon Demurrer, That he ſhall have his Privilege in a *Debt Qui tam* &c.

&c. becauſe it *is only the Suit of the Party*; tho' *in Information* he ſhall *not* have his Privilege. And it was ſaid to be the Suit of the Party, 1ſt, Becauſe he may be Nonſuit, the which he cannot be in an Information. 2dly, He may pray a Tales without Warrant of the Attorney General. 3dly, This ſhall not be determined by the Demiſe of the King. And cited Cr. Car. 10. **Farrington's** Caſe there adjudg'd to be merely the Suit of the Party. Skin. 549. Trin. 6 W. & M. B. R. Baker v. Duncomb.

ſhall abate. — Lutw. 193. S. C — S. P. 1 Salk. 30. Trin. 7 W. 3. B. R. Kirkham v. Wheeley.

(D) *What Perſons* ſhall have the Privilege.

1. **THE** Farmer of the Chief Clerk of B. R. **ſhall not have the Privilege of the Court, becauſe he is not any** Neceſſary Attendant **upon him. P. 1. Ja. B.**

2. **The** Steward of his Lands **ſhall have the Privilege.** 20 H. 6. 26. **b.** Defendant moved to be diſcharged out of Execution, being *Steward of the Houſhold to Baron Bourk, a Foreign Envoy*, and obtained a Rule to ſhew Cauſe, which was afterwards diſcharged on hearing Council on both Sides, it appearing that the Defendant *was a Trader*, that he *reſided at his own Houſe* in the Old Palace Yard, Weſtminſter, *and* that *the Envoy was at Hanover at the Time of the Arreſt.* Notes in C. B 281. Hill. 9 Geo. 2. Cain v. Molineux

3. **If a Man be** not retained with a Clerk in Chancery, but is his Servant to do his Commands only at this time of the Suit, **yet he ſhall have the Privilege.** 11 H. 6. 8. **b. Quære.** Br. Privilege, pl. 54. cites S. C — No *Servants* ſhall have Privilege, but thoſe who are *Attendants at the Office, or upon their Maſter*, as Cooke, Butler &c. Per Littleton. Br. Privilege, pl. 8. cites 34 H. 6. 15. ——— *Servant* of the Chancery ſhall have the Privilege, contra of *Servant of the Servant*. Br. Privilege, pl. 9. cites 34 H 6. 29 ——— *But* per Priſot, *Servant of a Gentleman, who is Servant of the Chancery*, ſhall have the Privilege, but this is as Servant of the Chancery, and not as Servant of the Servant. Quære. Ibid.

4. Bill lies againſt *Filazer* of the Court. Br. Bill, pl. 5. cites 7 H. 6. 36.

5. Debt againſt H. S. who caſt Superſedeas of the Exchequer as *Servant of the* Lord Cromwel, *Chamberlain of the Exchequer*; Pole ſaid, that the Privilege extends to thoſe who are *Accomptants in the Exchequer, and to the Treaſurer of England, and other Aſſiſtants of the Court, and their familiar Servants who are about the Offices and Buſineſſes of the Account in the Exchequer, and to their menial Servants dwelling in their Houſe, and to no others*; and that the Defendant is Deputy to the ſaid Ld. Cromwell at Hull, and is accountable there, and not in the Exchequer, and that he is not a Houſhold Servant of the ſaid Ld. Cromwell, which Newton agreed; For the Privilege *does not extend to the Shepherd nor Carter, but to the Servants who are about his Perſon, or attendant at the Court*; and they demurred upon the Superſedeas, becauſe the King recorded by the Writ, that he is continual Servant to the Chamberlain, and Day given over to the next Term, and there he caſt another Superſedeas, rehearſing him to be menial Servant. Per Newton, *by the Day given over*, the Juriſdiction is affirmed but for the firſt Superſedeas only; Per Portington, He who pleads a Plea to the Juriſdiction of the Court, ſhall not plead other Plea to the Juriſdiction after; but here is no Plea pleaded, but Day given over upon the Superſedeas; therefore the laſt Writ may well ſerve. Br. Privilege, pl. 16. cites 22 H. 6. 19.

6. If the *Sheriff's Bailiff* of H. *who comes to bring the Writs to Court, and to receive others* &c. be arreſted, he ſhall have the Privilege; Per Littleton. Br. Privilege, pl. 24. cites 9 E. 4. 47.

7. In

7. In Debt, *Cook, Butler of Officers of the Court* &c. ſhall have Privilege, and yet Bill does not lie againſt them; For they are not bound to be attendant in the Court as Officers and Attorneys are. Br. Privilege, pl. 42. cites 11 E. 4. 3. Per Littleton J.

8. *And a Mainpernor* ſhall have Privilege; Per Choke J. and yet Bill does not lie againſt him. Br. Privilege, pl. 42. cites 11 E. 4. 3.

So of a Priſoner of the Court, he ſhall have Privilege, and yet Bill does not lie againſt him. Ibid.

Br. Attorney, pl. 67. cites S. C.

9. Bill by *Attorney of B. R.* was rejected and abated; for no Attorney is there of Record, nor his Attendance neceſſary; But otherwiſe it is in *C. B.* For there he, who is Attorney of Record, ſhall have the Privilege to plead by Bill. Br. Bill, pl. 24. cites 1 H. 7. 12.

10. G. brought *Debt againſt T. Warden of the Fleet, by Bill of Privilege*, and he would not appear, and the Court was in great Doubt what Remedy the Plaintiff had to compel the Defendant to appear; for he cannot be forejudg'd the Court, becauſe he has an Inheritance in his Office. And after it was ſurmiſed to the Court, that the ſaid *T. had made a Leaſe of his* ſaid *Office* to another for three Years, and then the *Court was clear* of Opinion, that the ſaid *T. ſhould not have* the *Privilege*; for now during the Leaſe he is not Officer, but the Leſſee. 2 Le. 173 Trin. 29 Eliz. C. B. Gittinſon v. Tyrrel.

11. A Writ of Privilege was ſigned by all the Juſtices of the Court of C. B. for G. V. a *Clerk under the Cuſtos Brevium, to free him from being a Soldier*, reciting, that it is the Cuſtom and Privilege of that Court, time whereof &c. that neither the Attornies nor Clerks ſhall be preſſed for Soldiers, nor choſe into any Office Sine Voluntate ſua, but ought to attend the Service of the Court. Cro. Car. 11. pl. 2. Trin. 1 Car. C. B. George Venable's Caſe.

Keb. 137. pl. 70. S. C. that the Court conceived the Plea naught and without any Colour, and enquired who the Counſel was that ſet his Hand to the Plea, in order to puniſh him.

12. Debt on Bond of 100 l. Defendant pleaded *to the Juriſdiction*, that none of the Privy Chamber ought to be ſued in any other Court, at the Suit of any Perſon, without ſpecial Licence of the Lord Chamberlain of the Houſhold, and *that he is one of the Privy Chamber.* Plaintiff demurred, and a Reſpondeas Ouſter awarded; for the Plea is ill; and the Court ſeemed to be offended with the ſaid Plea. Raym. 34. Mich. 13 Car. 2. B. R. Barrington v. Venables.

S. C. Freem. Rep. 389. pl. 501. accordingly; But by Twiſden J. if upon Examination the Joining appears to be by Covin, he ſhall have his Privilege. ——— 2 Mod. 296. S. C. by Name of **Lambleton v. Scroggs & al.** in the Exchequer Chamber, and there North Ch. J. ſaid, That he always took it to be an uncontroverted Point, that a Serjeant at Law ſhould be ſued only in C. B. by Bill; that he is bound by his Oath to be there, and when he brings a Writ of Privilege, it is always out of that Court and no other. Paſch. 30 Car. 2. Curia adviſare vult. ——— An Action was brought by Bill againſt a Serjeant at Law for Work done, the Defendant pleads in Abatement that he ought to be ſued by Original, and not by Bill; on this a Demurrer was joined; and after many Arguments and Caſes cited, the Court ſaid, The Caſe of *a Serjeant and Prothonotary's Clerk are upon the ſame Foot, neither* of them *being bound to perſonal Attendance*, as Prothonotaries and Attornies are, ſo that he ought to have been ſued by Original; and therefore the Court gave Judgment for the Defendant, that the Bill ſhould abate

13. In Aſſault and *Battery againſt A. and B.* A. pleaded Son Aſſault Demeſne, *B. pleaded his Privilege as a Serjeant at Law*, to be ſued only in C. B. The *Plaintiff demurred, becauſe* he is not the ſole Defendant, but *joined with another*; And it was ſaid, That though, where the Action is joint and cannot be ſevered, he ſhall loſe his Privilege if he be ſued with another; but otherwiſe where the Action is ſeverable. But per Cur. a Serjeant at Law *has no Privilege againſt any Court at Weſtminſter*; for he may practice in any Court there, and ſo is not confined to C. B. *But if* he be *ſued* in any Court *elſewhere* than at Weſtminſter, *he may then plead his Privilege.* Whereupon a Reſpondeas Ouſter was awarded. 2 Lev. 129. Hill. 26 & 27 Car. 2. B. R. Deakins v. Sir William Scroggs & al.

abate. Rep. of Pract. in C. B. 104, 105. Trin. 7 & 8 Geo. 2. Swain v. Girdler, Serjeant at Law.—— Notes of Cases in C. B. 280. S. C.

14. The *Clerk of the Clerk of the Crown Office* is not privileged. 2 Show. 287. Pasch. 35 Car. 2. B. R. Ward v. Lawrence.

But the *Clerk of the Clerk of the Pells* shall have Privilege. Cumb. 482. Hill. 10 W. 3. Toms v. Loyd.

15. It was adjudged, that an *Attorney's Clerk* has no Privilege. Comb. 12. Hill 1 & 2 Jac. 2. Gardner v. Strode.

16. An Action was brought against a *Pothonotary's Clerk* by Original. He pleaded, that he ought to be sued by Bill; to which Plaintiff demurred. And the Court gave Judgment, that the Defendant should answer over. Notes in C. B. 280. Trin. 7. & 8 Geo. 2. in the Case of Swain v. Girdler, Serjeant at Law. Cites it as Mich. 10 Geo. C. B. Rot. 360. Baker v. Swindale.

17. That the Defendant is an *Attorney*, or a *Clerk in the Courts of Chancery* or *Exchequer* &c. may be pleaded in Abatement. R. S. L. 6.

(E) *Against whom* he shall have the Privilege.

1. If a Man be coming to a Court, yet if he be arrested in another Court at the Suit of the King, he shall not have his Privilege. 9 H. 6. 44. Curia.

2. Bill of Privilege lies not *against Attorney and his Feme*; for the Feme is not privileged. Per Littleton and Priot. Br. Privilege, pl. 9. cites 34 H. 6. 25.

Br. Bill, pl. 2. cites S. C. ——S. P. In *C. B.* And if the Baron has the Privilege of *Chancery*, this shall not serve for his Feme. Br. Bill, pl. 39. cites 35 H. 6. 3.

(F) *What Court* shall have the Privilege, and *against what.*

1. If a Man coming to answer an Action in Bank be arrested in the Marshalsea, he shall have the Privilege of the Bank; yet the other is an Ancient Court. 4 H. 6. 8.

2. So a Man shall have the Privilege of the Bank if he be arrested in London. 4 H. 6. 8. b.

A Man was *impleaded in Bank*, and *at the Exigent was sued in London by Action of Debt upon the Custom* of L. upon a Conceffit solvere, and had Writ of Privilege, and was dismiss'd, notwithstanding that it was alleged that it was a customary Action which does not lie at Common Law; for after this Action determined in Bank, he may have new Action in London; for he cannot be attendant at two Courts simul & semel, and *he who dwells in London and is arrested there*, where he is impleaded in Bank, shall have the Privilege. Br. Privilege, pl. 30. cites 38 H. 6. 29.

If a Man be *impleaded in* any *Court at Westminster*, and after is *arrested and condemned in London*, where he ought to have the Privilege of Westminster, he shall be dismiss'd. Brook says *Quære* inde; for the Plaintiff cannot have Action at another Time, if he was in Execution. Br. Privilege, pl. 44 cites 16 E. 4. 5.

3. If a Clerk of B. R. be sued by Bill there for Land in a Corporation, of which the Corporation has Conusance of Pleas, yet they shall not have Conusance of this Plea, but the Defendant shall have his Privilege of B. R. for otherwise he shall be drawn to the Attendance

dance in Inferior Courts. Tr. 4 Ja. B. R. *Butt's* Case by Popham.

2 Brownl. 266 S. C.— Hard. 117. in Case of Baker v. Lenthal, cites S C. by Name of Gay v. Reynolds.— *So* where P. an *Attorney of B. R. brought* an Action of *Trespass against the Warden of the Fleet*, who came into C B. and desired the Advice of the Court, he being an Officer thereof, and therefore ought not to be impleaded elsewhere. The Court said that because the Plaintiff has also his Privilege in B. R. as well as the Defendant hath in C B. this Equality shall render the Parties at Liberty, and he shall have the Benefit of his Privilege who first begins the Suit. And so the Warden was advis'd to answer. 2 Le. 41. pl. 56. Mich. 30 Eliz. Povey's Case.

4. If an Attorney of Bank brings a Bill of Debt against the Marshal of the King's Bench in Bank, the Attorney shall have the Privilege, and not the Marshal; for tho' the Court of B. R. is more high than the Court of B. yet both are equal in Antiquity, viz. Time whereof Memory; and therefore they being in Æquali Jure, the Court of Bank being first seised, shall have the Privilege; for the Presence of the Attorney is as necessary in Bank as of the Marshal in the King's Bench. Trin. 7 Ja. B. between *Guy and Sir Geo. Reynell.* Adjudg'd.

The Plaintiff being an Accountant in the Court of Exchequer by Bill there, pray'd to be relieved against a Bond put in Suit by Defendant in the Petty-bag, by Reason of his Privilege as Usher of the Chancery, the Defendant pleaded his Privilege as an Officer of the Court of Chancery. The Court agreed, that when *both Parties* are *privileged, his Privilege shall take Place who sues first*. And that in this Case the Suit in Equity to be relieved against the Penalty of the Bond is first attach'd here, and it is not the same Suit with that at Common Law, but distinct from it. *And* it was further said, that *if* both are privileg'd Persons, and *the Attendance of the one is more requisite than of the other* (as in the principal Case it is the Plaintiff here being an Accountant in this Court, and entered into his Account, as by his Bill is alleg'd, which cannot be compleated by Deputy or Attorney) in such Case *his Privilege shall be allow'd who has most Cause* of Privilege; Et adjornatur. But at another Day the Plea was overrul'd, and an Injunction granted till Answer. Hard. 117. pl. 2. Trin. 1658. Baker v. Lenthal.

If a *Minister of C. B.* brings Action there *against a Minister of B. R.* he shall not have Privilege of B. R. For C. B. has the eldest Seisin by their Minister. Br. Privilege, pl. 40. cites 10 E. 4. 4—— S. C. cited 2 Brownl. 267. in Case of Guy v. Sir George Reynel.—— A Man *sued Plaint in London*, and after the *Defendant brought* Writ of *Debt in Bank*, and had Privilege, and because the Plaint was elder than the Writ, therefore he was remanded, and had Procedendo; quod nota. Br. Privilege, pl. 39. cites 8 E. 4. 17.

5. If a *Prisoner* remains *in the Fleet by Command of the Barons of the Exchequer*, and Action is brought against him in *C. B.* the Court *may command the Warden of the Fleet to bring him into Bank to answer.* Br. Judges, pl. 29. cites 18 E. 3. and Fitzh. Office of Court 16.

6. *Trespass* was brought by A. against B. who was *return'd Nihil*, and the *Plaintiff came to London to sue other Capias*, and the *Defendant arrested him in L.* and the Plaint return'd in Bank by Writ of Privilege, and other Plaints and Surety of Peace, and Attachment of the Chancery were return'd; and he pray'd to be dismiss'd; and he who demanded the Peace was demanded and came not, by which he was dismiss'd of the Surety of the Peace, and of all the Plaints, and not of the Attachment, and the Defendant made no Fine. Br. Privilege, pl. 38. cites 4 E. 4. 15.

See (G) pl. 9.

7. *Privilege of C. B.* shall serve *in B. R.* Br. Privilege, pl. 22. cites 9 E. 3. 35.

And if he be impleaded *in B. R.* those of the Exchequer *will shew the Record of Account* &c. For they cannot make Supersedeas to the King; for there the Pleas are held Coram Rege, and not Coram Justiciariis; and he shall be dismiss'd. Ibid.

8. If an *Accountant in the Exchequer* be *impleaded in C. B.* the Exchequer may send Supersedeas to them to surcease. Br. Supersedeas, pl. 38. cites 9 E. 4. 57.

One who was *Receiver General if the Revenues* of the Crown in the Counties of W. L. &c. being sued in C B. brought a Writ of Privilege out of the Exchequer; but it was not allowed. D. 328. pl. 9. Mich. 15 & 16 Eliz. Hunt's Case.

Where the Sheriff returns Quod ante Adventum brevis, the Defendant was *taken by War-*

9. A Man was *taken in the Country by Surety of Peace, by Warrant of a Justice of Peace*, and after was arrested by Capias out of C. B. Per Brian, The common Course is that a Man so arrested shall have the Privilege, and ought to be dismiss'd out of C. B. which Townsend denied; and so it seems that *Sessions of the Peace* shall grant Privilege to a Man arrested. Br. Privilege, pl. 35. cites 2 H. 7. 4.

10. One

rant of the Juſtices of Peace, there the *Defendant ſhall anſwer and ſhall make Attorney*, and ſhall be remitted to the Juſtices of Peace ; quod nota. Br. Privilege, pl. 41. cites S. C.

10. One S. was *impleaded in C. B.* at the Suit of a Widow in an Action of Debt, and now came an Injunction or Writ of Privilege out of the Exchequer, reciting the ſaid S. to be *one of the Grooms of the Queen's Privy Chamber, and Keeper of the Privy Purſe*, and ſo accountable to the Queen; and that they do not hold Plea of the ſaid Action, but that the Plaintiff ſue in the Exchequer; but the Writ was utterly diſallowed by the Court. 3 Le. 223. pl. 300. Hill. 30 Hill. in C. B. Seckford's Caſe.

11. Diggs being committed by the *Court of Requeſts* for not anſwering a Bill there for the ſame Matter for which he had a Bill here in *Chancery*, had a Corpus cum cauſa. Toth. 219. cites 36 Eliz. Lib. A. fo. 539.

12. In *Treſpaſs* in B. R. the Treſpaſs was laid *in Cornwall*, the *Defendant* pleaded in Abatement, and *ſet forth the Charter* of King Edw. 1. granted *to the Stannery-Court*, thereby enabling the Stannery-Workers to plead and be impleaded in the Stannery Court ; and ſo prayed the Privilege of its being tried there; upon Demurrer the Court agreed, That if *one* be here *in Cuſtodia Mareſchalli*, he *is not to be fetch'd away*, and if being in Cuſtodia Mareſchalli, he ſhould not anſwer here, none then could have Remedy againſt him; and therefore he was inforc'd to anſwer. 2 Bulſt. 122. 123. Mich. 11 Jac. Parke v. Lock.

13. One that is privileged *in Cheſter*, has Cauſe of Action *againſt A. who inhabits in Cheſter, and againſt B. who inhabits in London.* He cannot ſue in the Exchequer in Cheſter, tho' he is privileged there; for by ſuch Means he might bring one from Dover to anſwer to a Suit in Cheſter. Hutt 59. Grigg's Caſe.

14. There are *three Sorts of Privilege in the Exchequer.* 1ſt, as *Debtor*; 2dly, as *Accountant*; 3dly, as *Officer* of the Court. Againſt the firſt of theſe any Man who hath a ſpecial Privilege in another Court, as an Officer of the Court, or an Attorney ſhall have his Privilege; Becauſe the Privilege of a Man as Debtor is only a General Privilege; But if an Accountant begin his Suit here, no Privilege ſhall be allowed elſewhere; Becauſe he has a Special Privilege, by reaſon of his Attendance, to paſs his Account, in which the King hath a particular Concern ; the ſame holds in an Officer of the Court, if he commences a Suit here, no Privilege in another Court ſhall prevail againſt him ; Becauſe his Attendance here is requiſite, and his Privilege here is attached firſt by commencing his Suit. But where the Accountant has finiſhed his Account, and reduced it to a Certainty, ſo that it is become a Debt, then he hath only a Privilege as a General Debtor has; So a Servant to an Officer, or Miniſter of the Court, has no Privilege againſt a privileged Perſon elſewhere. Per Cur. Hard. 365. Paſch. 16 Car. 2. in the Exchequer Clapham v. Sir J. Lenthall.

15. *A Member of the* Univerſity of *Oxford* ſued in the Exchequer, and pleaded his Privilege, but it was not allowed. Hard. 188. Paſch. 13. Car. 2. Wilkins v. Shaelcroft.

16. *Latitat* was *ſued out of B. R. againſt* the Defendants being *Commiſſioners of the Treaſury*, thereupon Sir John May *Puiſne Baron of the Exchequer* come into B. R. and *ſhewed the Red Book, which is* an Ancient Book, and *reckoned a Record* in their Court, wherein it was ſaid, that the Treaſurer ſhould have the Privilege of being ſued only in that Court, and the Patent under the Great Seal, which conſtituted the Defendants &c. and granted to them Office of Treaſurer of England was produced, and thereupon they demanded their Privilege might be allowed, and after ſome Debate, it was granted; And tho' it was urged, That there ought to have been a Writ of Privilege, brought, and the Sheriff would have returned ſomewhat of it &c. yet the Cou there was a Record to.

rt ſaid judge

judge upon, and accordingly allowed the Privilege. 2 Show. 299. Paſch 35. Car. 2. B. R. Lampen v. Sir Edward Deering & al.

Attorney of C. B was indebted to B. in 34 l. who was indebted to D. in 40 l.

17. The Caſes wherein *Attorneys*, *Officers* &c. ſhall have their Privilege, if ſued in another Court are to be underſtood, *when the Plaintiff can have the ſame Remedy* againſt the Officer &c. *in his own Court, as in that where he ſues him.* G. Hiſt. of C. B. 169.

D. according to the Cuſtom of London, *attached the Money in the Hands of L. who was B's Attorney.* L. brought a Writ of Privilege, which was allowed by all the Court, except Harper J. becauſe the Attorney was not indebted to D. but only by Cuſtom; And the Privilege of the Courts at Weſtminſter ought not to be impeached by any Cuſtom, and the Prothonotaries cited one **Underhill's Caſe**, where ſuch Privilege was allowed. 2 Le. 156. pl. 190. 20 Eliz. C. B. Lodge's Caſe.

T. an *Attorney of B. R. covenanted to pay Neviſon* 200 l. *when he ſhould make him a good Title of certain Lands*, purchaſed of him. *N. made a Conveyance* to T but there being *ſome Incumbrances not diſcharged.* Some *Creditors of N.* hearing of this Covenant *attached the Money* (according to the Cuſtom of Foreign Attachments in T's hands as a Debt owing by him to N. whereupon T. ſued his Writ of Privilege, and the Court was moved in Behalf of the Creditors, that this Writ of Privilege would not lie in B. R. becauſe the Plaintiffs in the Sheriffs Court, who were *Creditors of* N. *could have no Remedy againſt T. in B. R. or elſewhere, out of the Sheriffs Court*, becauſe this was a cuſtomary Way of Proceeding there, not warranted by the Common Law; nor can any Action at Common Law be brought in ſuch Manner; And for thoſe Reaſons the Privilege was diſallowed. 1 Saund. 67. Paſch. 19 Car. 2. Turbill's Caſe —— S. P. Gilb. Hiſt. of C. B. 169. and ſeems to intend S. C.—Sid. 362. S. C by Name of **Watkins v. Lewis**, alias Turbill's Caſe accordingly, And that if ſuch Privilege ſhould be allowed, a Debtor, by putting his Eſtate into the Hands of an Attorney, would bar his Creditors; And tho' **Lodge's Caſe**, 2 Le. 156. was inſiſted upon, yet the Court paid no Regard to it, but diſallowed the Privilege.

If a Writ of Entry, or other real Action be brought againſt an Attorney of B. R. he cannot plead his Privilege; Becauſe, if this ſhould be allowed, the Plaintiff would have a Right without a Remedy; For B. R. hath not Cognizance of Real Actions, G. Hiſt. of C. B. 169 —— So if an Attorney of C. B. be ſued in an Appeal, he ſhall not have his Privilege, for his own Court has not Conuſance of this Action, and by this Protection he ſhould go unpuniſhed. G. Hiſt. of C. B. 196.

(G) Of the Chancery, [and of other Courts.] *In what Caſes* it ſhall be granted.

Vern. 246. Tr. 1684. Fanſhaw v. Fanſhaw. S. P. as to the Privilege of the Exchequer.

1. **If an** Action **be brought** againſt 2, whereof one is Clerk of the Chancery, **who ought to have the Privilege, yet** if the Action cannot be ſevered, **the Clerk ſhall not have his Privilege, Becauſe the other cannot be ſued in the Chancery, and ſo the Party ſhould be without Remedy, if it ſhould be granted for both.** 14 H. 4. 21. **be admitted.** 20. H. 6. 32. b.

—— S. P. Cary's Rep. 96. Eaſt & Scudamore v. Bittenſon & Valence. —— S. P. P. R. C. 289. — S. P. Curſ. Canc. 497.

Br. Privilege, pl. 12. cites S. C. per Hall. — *Debt againſt 2 Executors*, the *one appeared, and the other made Default*, and Writ of Privilege of the Chancery was caſt after that the Plaintiff had counted againſt him, and it was diſallowed, becauſe *both* the Executors *cannot be ſued in the Chancery*, and yet of Executoss he who firſt comes by Diſtreſs ſhall anſwer, and here the one came without the other, and the Plaintiff counted againſt him, and yet the Superſedeas diſallowed. Br. Privilege, pl. 18. cites 22 H. 6. 56.

2. As in Debt **againſt 2, if the one ought to have the Privilege of the Chancery, if he had been ſued alone, yet he ſhall not have it in this Caſe, becauſe the Duty is intire.** 14 H. 4. 21 b.

Fol. 275.

3. **The** ſame **Law of a** Conſpiracy againſt 2, whereof one **is a Clerk of the Chancery.** * 14 H. 4. 21 b. † 20 H. 6. 32. b.

* Br. Privilege, pl. 12. cites S. C. —— † Br. Privilege, pl. 7. cites S. C. & P. by Markham.

Decies tantum againſt 3, & Superſedeas of the

4. But **if an Action be brought againſt 2, and** the Action may be ſevered, **there, if the one be a Clerk of the Chancery he ſhall have the Privilege.** 14 H. 4. 21.

Exche quer

Exchequer was iſſued forth for one. Per Newton, the Superſedeas ſhall be allowed; For he may ſue againſt 2 here, and againſt the 3d in the Exchequer. Browne ſaid, That in the *Superſedeas is Exceptis quæ nos tangunt*, and therefore the King ſhall have the Moiety. And per Newton, this is well ſaid, and therefore we will adviſe. Br. Privilege, pl. 14. cites 21 H. 6. 22.

5. As if a Treſpaſs be brought againſt a Clerk of the Chancery and another, the Clerk ſhall have the Privilege, For he may be ſued there, and the other at the Common Law. * 14 H. 4. 21 Dubitatur, 20 H. 6. 32. b.

* All the Writ ſhall abate. Br. Privilege, pl. 12. cites S. C. by Hall.

— Br. Brief. pl. 131. cites S. C. per Hill, that the Writ ſhall abate againſt the other; But that it was held Contra 34 H. 6.

In Treſpaſs againſt two, where the one is Clerk of the Chancery, and he caſts Superſedeas; it ſhall not be allowed for the one nor the other. Br. Privilege, pl. 9 cites 34 H. 6. 25.

Treſpaſs was brought againſt B. *an Officer of* the Chancery *and* 3 *others*. B. caſt his *Privilege*, and it was *diſallowed, becauſe* the *others are joined with him*, and they are not there pleadable. D 377. pl. 30. Marg. cites Hill. 42 Eliz. C. B Bacon's Caſe. —— *So* in *Treſpaſs againſt C. and others, C. pleaded* his *Privilege as Clerk to one of the Prothonotaries of C. B.* Plaintiff replied, that this Treſpaſs was done by them jointly, and that he had taken out an Original againſt them all, and that this Declaration againſt C. was upon that Original, and that he ſtill proſecuted the reſt, to which the Defendant demurred, and Judgment was given (Twiſden and Jones only preſent) Quod reſpondeat ouſter; For C *being joined with others* in the Action *ſhall have no Privilege*. Vent. 298. Mich. 28 Car. 2. B. R. Molyn v. Cook & al.

6. If A. be arreſted at the Suit of B. upon a Latitat, and A. is detained in Priſon for Default of Bail, and after A. removes himſelf in B. R. and there the Plaintiff declares againſt him In Cuſtodia Mareſchalli. If A. be a Clerk of the Bank he ſhall have his Privilege upon his Plea, that he is a Clerk attendant to one of the Prothonotaries of B. tho' he be actually in Cuſtodia Mareſchalli; Becauſe he comes there upon this Suit. Mich. 11 Car. B. R. between *Reeve and Jacey*. Per Curiam.

7. But if a Clerk, or Attorney of Bank be In Cuſtodia Mareſchalli at the Suit of A. and after B. declares againſt him In Cuſtodia Mareſchalli, he ſhall not have his Privilege againſt B. Becauſe he does not come there at the Suit of B. but B. declares againſt him collaterally; For he is truly as to him In Cuſtodia Mareſchalli. Mich. 11 Car. B. R. in *Reeve and Jacey's* Caſe. Per Curiam.

S. P. Gilb. Hiſt. of C. B. 172. cites S. C. For being once ouſted of his Privilege at the Suit of A. he can no longer attend as an Attorney of the other Court, but is fixed in the King's Bench, and therefore cannot by the Suppoſition of the Neceſſity of his Attendance ouſt the the Plaintiff of his Action.

If the *Clerk is brought in at the Suit of A. upon Bail*, this doth not hinder him from claiming his Privilege; Becauſe he *had no Opportunity of doing it before*, and then it is abſurd to ſay, That he ſhall not have Privilege againſt B. *But if* the Privilege had been *waived as to the firſt Action* it would have been waived as to the 2d alſo. 1. Salk. 2. pl. 3. Hill. 8. W. 3 B. R Jones v. Bodiner —— And it is a Waiver in all other Actions commenced in that Term. Carth. 378. Bands v Bodinner, S. C.

But if an Attorney of C. B. is *brought into B. R at the Suit of an Attorney there, which is an Eſtoppel to Defendant's Privilege*, even in ſuch Caſe in other Actions commenced againſt him in B R. in the ſame Term, he ſhall be ouſted of his Privilege; Becauſe the Juriſdiction of B. R. was attached upon him in the firſt Action. Per Cur. Carth. 378. in the Caſe of Bands alias Jones v. Bodinner.

But Paſch. 7 Ann where an Action was brought againſt an *Attorney of C. B* who *was in Cuſtody of the Marſhal of the King's Bench*, at the Suit of another, and in this Action they declare againſt him In Cuſtodia Mareſchalli, and the Defendant pleaded his Privilege as an Attorney of C. B the Court directed that the Defendant ſhould be removed by *Habeas Corpus* to the Common Pleas, and that an Action ſhould be brought againſt him there. 11 Mod. 167, 168. Turton v. Prior.

8. Treſpaſs againſt the Baron and Feme, the *Baron caſt Writ of Privilege for him and his Feme, becauſe he was Servant of the Chancellor*; Et per tot. Cur. it was diſallowed. Br. Privilege, pl. 9. cites 34 H. 6. 25.

And the ſame Caſe was argued the ſame Year, fol. 35.

And there it was adjourned, and after the principal Caſe of the Baron and Feme was adjudged againſt the Defendant, and he awarded to anſwer, becauſe the Feme ſhall not have the Privilege, and therefore Baron ſhall not. Ibid. —— Br. Bille. pl. 2. cites S. C. —— S. P. Toth. 217. cites 32 Eliz. Barkley v. Huſſey. —— S. P. For her Attendance is not requiſite in his Court, nor is ſhe impleadable here in the Petty-Bag; and beſides, where the *Common Law and a private Cuſtom*, or Privilege encounter one another, the Common Law ſhall have the Preference; And therefore it is, That where an Action is brought againſt 2, one of them only having Privilege, his Privilege ſhall not be allowed him. P. R. C. 290 — Curſ. Canc. 497. S. C.

So in Treſpaſs in B. R. *againſt Baron and Feme for Treſpaſs* done *by* the *Feme*, the *Baron prayed* his *Privilege*, being an Officer *of the Exchequer*, and to this Purpoſe tendered to the Court his Writ of Privilege; *But* it was here *diſallowed*; For the Baron is only joined for Conformity, and they cited the Book of - - - H. 6. - - - and Lord Dyer 307 a. accordingly; But the Court gave Day to hear Counſel. 2 Sid. 157 Paſch 1659. Anon.

So in *Debt againſt A. and his Wife, as Executrix* to the Debtor &c. the Husband comes in upon the Exigent, and prays his Privilege, as *Servant to the Lord Keeper* of the Great Seal; But per Cur he ſhall not have it, becauſe the Wife was joined with him in this Action; and ſhe cannot have any Privilege. Noy. 68. Etherington. v. Aſhton & Ux. —— S. P. where a *Clerk in Chancery, and his Wife Executrix*, were ſued in C. B. the Privilege was diſallowed by all the Juſtices, becauſe ſhe could not have the Privilege, and therefore he could not. Godb. 10. pl. 13. Mich. 24 Eliz. Pole's Caſe.——And it is there ſaid to be adjudged by the whole Court accordingly in 34 H. 6. 29. & 35 H. 6. 3. — D. 377. pl. 30. S. C. by Name of Powel's Caſe. — S. C. cited Vent. 299 in the Caſe of Molin v. Cook & al.

So where A. *Clerk to a Remembrancer* in the Exchequer had *married* M. Widow, and *Executrix of one* J. and *brought Action* of Debt by Privilege of the Exchequer againſt one *for* a *Debt due to* the *Teſtator*, becauſe the Cauſe accrued for Debt due to the Executrix, *no Privilege* is *grantable*; per Cur. Sav. 20. pl. 49. Paſch. 24 Eliz. Lowe's Caſe.

So where ſhe is *returned Cepi Corpus*; For ſhe cannot be Priſoner at two Courts Simul & Semel. Ibid.— *And* a Man, who was *outlawed*, and *went to Calais, and came back to ſue his Pardon*, and was arreſted, he had his Privilege. Ibid.——*So* of one who is outlawed, and *comes to ſue Writ of Error*, and is arreſted, he ſhall have the Privilege of the Court where the Outlawry is, viz. of C. B. and the Arreſt was in B. R. and yet the Privilege was allowed. Ibid.

9. In Treſpaſs, *Exigent* was awarded *againſt the Baron and Feme*, and *ſhe rendered herſelf to the Sheriff, and, as ſhe was coming, ſhe was arreſted in London* upon Plaint againſt her and her Baron, *upon the Cuſtom of Feme ſole Merchant*, of which the Plaintiff cannot have Remedy at Common Law; But Quære thereof; and the Feme notwithſtanding this was diſmiſſed; But per Choke in ſuch Caſe of the Cuſtom, *where the Party arreſted* is in ſuch Plight that he *may make Attorney in the Action in Bank*, he ſhall be remanded to London; But in this Caſe ſhe came by Reddidit ſe upon Exigent, and therefore ought to have the Privilege; For ſhe cannot make Attorney. Br. Privilege, pl. 22. cites 9 E. 3. 4. 35.

10. A Man was *arreſted in L.* and *after came a Latitat* out of B. R. *by which he was arreſted again*, and the Arreſt by the Latitat was diſcharged, becauſe he was impriſoned before by the firſt Arreſt, and he cannot be impriſoned in 2 Courts Simul & Semel. Br. Privilege, pl. 24. cites 9 E. 4. 47.

11. A Man brought *Debt in Bank, and after* brought Action of Debt *in London for the ſame Sum, and* arreſted the Defendant there, and he came now by Habeas Corpus, and prayed to be diſcharged; Per Yaxley, the *Plaintiff is nonſuited in* the Action here in *Bank*; & per tot. Cur. this is not material, becauſe he had Cauſe of Privilege at the Time of the Action commenced in London; Quod nota; But where *it appears by Examination that the Suit in Bank was by Covin*, there he ſhall not have Privilege; and where the Plaintiff, who has Suit in Bank, impleads the ſame Defendant in any other Court for this or other Cauſe, he ſhall make Fine; per Fineux & Reade. Br. Privilege, pl. 19. cites 24 H. 7. 6.

S. C. cited Godb. 10. pl. 13. Mich. 24 Eliz. in Pole's Caſe. But Dyer ſaid, That the Reaſon was, becauſe the Wife came in Aid of her Husband to follow his Suit.

12. A Man *brought Action in Bank*, and *at the Pluries* Capias *he and his Feme were arreſted in a baſe Court coming towards Weſtminſter*; and becauſe the Baron had Privilege, therefore his Feme ſhall be in the ſame Condition, and ſo both had Privilege; and yet the Suit in the baſe Court was for a *Debt of the Feme before the Coverture*; Quod nota. Br. Privilege, pl. 2. cites 27 H. 8. 20.

13. The *Defendant appeared* upon a Subpœna, *and anſwered* the Plaintiff's Bill, *and after attended upon the Lord Keeper for a Matter in Controverſie between him and one Ellen Wryne*; and in the mean Time *was arreſted in London* at the Suit of one Anthony Brisket, contrary to the Order and Privilege of this Court. It was ordered, That a Subpœna of Privilege be granted to the Mayor and Sheriffs of London for the Diſcharge of the

ſaid

ſaid Arreſt. Cary's Rep. 61. 2 Eliz. f. 58. Richard Dutton Plaintiff v. William Alerſey Deſendant.

14. If any *Officer, Clerk, or Attorney of any of the* 4 Ordinary *Courts*, who ought to be Attendant to the Court, *be arreſted* in London, or other Place, *in Time of Attendancy, he ſhall have* a Writ of *Privilege, with* a Poſitive *Superſedeas therein*, directing the Plaintiff quod Sequatur in Curia Ubi &c. ſi Voluerit, where he may have the Remedy of his Suit as well as elſewhere; In which Caſe no Procedendo ſhall be awarded to the inferior Court. *Otherwiſe* it is *where the Party arreſted has Privilege by reaſon of Suit* depending *in* the *ſuperior Court, by* him *or againſt him*, and this is the Cauſe only of his Privilege. Note the Diverſity, by all the Juſtices and Prothonotaries of both Benches. D. 287. a. pl. 48. Hill. 12 El. Anon.

15. The Deſendant got a Writ of Privilege as *Servant to the Lord Keeper*, and removed 2 ſeveral Suits againſt him by the Plaintiff in London; foraſmuch as the *Lord Keeper declared* in open Court, That the *Defendant is not now his Servant*, therefore ordered, That the ſaid 2 ſeveral Cauſes be remanded into London, and the Deſendant not to be allowed the Privilege of this Court. Cary's Rep. 146. 21 Eliz. Warner and Clerke v. Maynard. Curſ. Canc. 496. cap. 18. cites S. C.

16. An *Attorney at Law join'd with another* in Action, thereby to avoid a privileg'd Man in Chancery; the Suit was ſtay'd, and the Privilege allow'd. Toth. 220. cites 28 Eliz. fol. 247. Pepwell v. Goldſmiths London.

17. P. was *arreſted by Proceſs out of B. R.* and *after* the Arreſt *procured himſelf to be made an Attorney of C. B.* and after he *pleaded, That Die impetrationis Billæ, he was an Attorney of C. B.* and pray'd his Privilege. The Queſtion was, If the Privilege ſhould be allow'd? for a Privilege which accrues pendente lite ſhall not be allow'd, and here the Plea is true, but there is ſpecial Matter to avoid it; And Ley Ch. J. demanded if he was Attorney *at the Time of the Bail put in*, that being the material Point; for 'till then no Writ can be put in, and by the putting in of Bail he is in Cuſtodia Mareſchalli. 2 Roll. Rep. 432. Trin. 21 Jac. B. R. Goldſborough v. Perryman.

18. Lord D. Tenant in Tail of a Foreſt rendring Rent, Reverſion to the King, exhibited an *Engliſh Bill againſt a Clerk to the Regiſter of the Chancery, to diſcover if ſuch Lands were of the Foreſt.* Deſendant pleaded the Privilege of the Chancery and the Letters Patents of the King, by which he granted to the Regiſter to be ſued in no other Court. And it was *Ruled* by all the Court, *That* in this Caſe *the Privilege ſhall not aid the Clerk*, but that he ought to anſwer over. And their Reaſon was, becauſe the Reverſion being in diverſe other Things ſo privileges the Poſſeſſion, that it is as the Poſſeſſion of the King; and alſo the Privilege is granted to the Regiſter himſelf, and not to his inferior Clerks. Litt. R. 97. Trin. 4 Car. in Scacc. Lord Derby v. a Clerk to the Regiſter of the Chancery.

19. A Suit in Chancery was againſt ſeveral Deſendants. *One of the Defendants died. The Survivors pleaded the Privilege of the Exchequer.* But becauſe this Suit was joint at firſt againſt the Deceas'd and the others, and for any Thing appearing he had no Privilege in the Exchequer; ſo that the Court of Chancery being lawfully poſſeſſed of the Plea, his Death ought not to give any more Privilege to the other Deſendants to draw the Cauſe from this Court than they ſhould have had at the Beginning, or while he lived; and therefore his Lordſhip did adjudge the Deſendants Plea to be inſufficient, and ordered the Deſendants to make a direct Anſwer to the Plaintiff's Bill in this Court. 1 Chan. R. 69, 70. 9 Car. 1. fol. 135. Lake v. Philips.

20. The Deſendant was arreſted at the Plaintiff's Suit as he came about *putting in his Anſwer*, and impriſon'd, and after ſeveral other Actions charged

charged upon him, were all *diſcharged*, it being done in the Breach of the Privilege of this Court. Chan. Rep. 92. 11 Car. Alisbury v. Troughton.

21. A Bill was brought, ſetting forth, That R. being arreſted and impriſon'd at the Suit of C. upon mean Proceſs, and after *made an Eſcape, and* upon a freſh Purſuit being *retaken*, is in Cuſtody again; *But* the ſaid R. *making it appear* to this Court, *That he had a Cauſe depending* here, *and he attending the ſame, was arreſted and detained*, contrary to the ancient Privilege of this Court; whereupon this Court ordered the Bailiff, who laſt took him, to be committed to the Fleet for refuſing to diſcharge him. The Court ordered Meynel and Sterling Sheriffs of Middleſex to diſcharge the ſaid R. out of Cuſtody. The Sheriffs acquainting the Court, That the Caſe is as aforeſaid, and that the ſaid C. threatens to bring an Action of Eſcape againſt the Sheriffs, the Court again ordered the ſaid Bailiff to be committed cloſe Priſoner, and that the Sheriffs ſhould forthwith diſcharge the ſaid R. out of Cuſtody, and that a Writ of Privilege be awarded in that Behalf; whereupon the Sheriffs diſcharged the ſaid R. and thereupon the ſaid C. brought his Action againſt the Sheriffs for the Eſcape, and would enforce the Sheriffs to pay the Debt, and ſo conſequently invalidate and overthrow the ancient and undoubted Privilege of this Court. The Court ordered that the ſaid Action againſt the Sheriffs, touching the Arreſt and ſetting R. at Liberty be diſcharged, unleſs C. ſhew Cauſe. Whereupon C. offered ſeveral Reaſons for Cauſe, but the Court diſallowed the ſame, and confirmed the 1ſt Order; and that the ſaid Action be diſcharged, and all Proceedings at Law againſt the Sheriffs be ſtay'd. But the ſaid C. inſiſted that his Debt is great, and if the ſaid R. be under Protection of this Court, C. is like to loſe it. The Court declared C. may, notwithſtanding the former Orders, proceed againſt R. in order to the Satisfaction of his Debt, as he ſhould ſee Cauſe. 1 Chan. Rep. 217, 218. 13 Car. 2. f. 677, 694. Meynel and Sterling v. Cooper.

22. The *King's Attorney of the Marches in Wales brought* his *Action there as Executor* to another, and inſiſted to have his Privilege, becauſe he was bound to give his Attendance there; But the Court ſaid, He ſhould not have it here, becauſe he ſued as Executor. Latch. 199. Ewer's Caſe.

23. The Privilege of Chancery belongs to the Lord Chancellor or Keeper; to all the Maſters, Miniſters, *Officers, and known Clerks* of the Courts; *and to the menial Servants* of the Chancellor or Keeper, and of the Maſters, Miniſters, and Officers; And they may, as the Caſe requires, be impleaded here, either as at Common Law in the Petty-Bag Office, or in a Way of Equity by Engliſh Bill. P. R. C. 284.

24. Perſons who have Privilege of Chancery are *not to be ſued elſewhere* than in this Court, either by Latin Plea in the Petty-Bag Office, or by Engliſh Bill, as the Caſe requires, *ſave* in Caſes *where the Queen is immediately concerned*. P. R. C. 285.

Curſ. Canc. 497. cites S C. 25. A Defendant in Chancery refuſed to anſwer, becauſe he was an *Inhabitant of the County* Palatine *of Lancaſter*, but was over-ruled, the Plaintiffs being Miniſters and Servants of this Court, and as ſuch intitled to Privilege here. P. R. C. 286.

Curſ Canc. 497 cites S.C. 26. The Lord Chancellor Egerton declared, That no *Chequer* Men is privileg'd againſt a Subpœna of this Court. And ſeveral Pleas by Officers there, as Regiſter, Receiver &c. have been over-ruled. P. R. C. 291.

27. The Plaintiff as Debtor to the King, and *Treaſurer of the Navy, exhibited his Bill in the Exchequer*. The Defendant *pleaded* his Privilege, as *one of the ſix Clerks in Chancery*, under the Great Seal. Hale Ch. B. and the Court held, That a general Privilege, as Debtor, will not hold againſt a ſpecial Privilege, but againſt a general Privilege it will. But a Privilege as *Accountant will hold againſt a ſpecial Privilege in another Court as Officer of the Court, or otherwiſe, tho' it be not alleg'd that he has

* Hard. 365. Clapham v. Lenthall.

has enter'd upon his Account. And in this Caſe the Plaintiff being Treaſurer to the Navy, is Eo ipſo an Accountant. Hard. 316. Mich 14 Car. 2. in the Exchequer, Sir Geo. Carteret v. Sir John Maſſam.

28. The *Warden of the Fleet* moved for a Writ of Privilege ſitting the Parliament, alleging that he was obliged to *attend the Houſe of Lords*, and therefore ought to be privileg'd from Suits, and produced Precedents where Writs of the like Nature had been granted; and upon hearing Counſel of both Sides, the Court inclined to grant this Writ; but it afterwards appearing that he *was ſued for Eſcapes*; and conſidering the ill Conſequences that might happen, and thinking that it was in their Diſcretion whether to grant the Privilege upon Motion, or not (for they could not judicially take Notice of this Privilege of Parliament) the Court ſaid he might plead it if he would, but they would not grant it upon Motion; or otherwiſe, if he thought his Privilege infringed by any Proſecution againſt him, he might complain to the Houſe of Lords for Breach of Privilege. 2 Vent. 154. Paſch. 2 W. & M. C. B. The Warden of the Fleet's Caſe.

(G. 2) Allowed. How.

1. IN *London*, the Privilege ſhall not be allowed but *upon Writ* brought thereof, and *not by Way of Plea*; but *in Bank* he may plead it by Way of Plea. Br. Privilege, pl. 7. cites 20 H. 6 30.

An *Attorney of C. B.* being *ſued* by Bill *in B. R.* the W. 3. B. R.

Court will *not diſcharge him without pleading* his Privilege. 2 Salk. 544. pl. 3. Hill. 8 Lane v. Saltmarſh.

2. Thomas Younge *Juſtice ſued Bill in the Exchequer againſt the Clerk of the Hanaper upon his Account*, and the *Defendant* caſt Superſedeas of the Privilege of the Chancery, becauſe he was *Clerk of the Chancery*; and by all the Juſtices in the Exchequer Chamber, the Superſedeas ſhall not be allowed; for every one who is *accountant ought to be attendant* and preſent, and there he ſhall be ſued; for it is an Advantage to the King that he ſhall attend, and ſhall account; and Accountant may have Bill againſt his Debtor, and this is for the King's Advantage, Quod citius ſolvat Regi; *and if* Accountant be *ſued in C. B.* they ſhall ſend Superſedeas to ſurceaſe; *and if he* be *ſued in B. R.* thoſe of the Exchequer ſhall ſhew the * Record that he is Accountant &c. and *ſhall not have Superſedeas to the King*; for the Pleas there are Coram Rege &c. and he ſhall be diſmiſs'd, and ſhall be ſued in the Exchequer. Br. Privilege, pl. 25. cites 9 E. 4. 53.

S. C Cited 2 Brownl. 267. in Caſe of Guy v. Sir George Reynel.——*An *Accountant* in the Exchequer to the King, was ſued in B. R. and a *Baron* of the Exchequer *came into the Court, and produc'd his Book of Accountants* to the King, and that the Defendant was one, *and prayed the Privilege* of the Court of Exchequer, that the Suit might be ſtay'd; the Court demanded of the Secondary what the Courſe was in ſuch Caſe, whether to grant it upon ſuch bare Averment of the Baron, or that it ought to be pleaded and prayed by the Party; Upon his informing the Court that it had been uſually allowed *without Plea or Prayer*, it was granted accordingly. But Williams J. was ſtrongly againſt it, and ſaid that there are many Books wherein it was adjudg'd in Point that it ought to be upon the Party's Plea and Prayer; and that without this the Court cannot certainly know whether he be the ſame Party for whom the Privilege is pray'd. 2 Bulſt. 36. Mich. 10. Jac. Anon.

3. A *Serjeant at Law* was *Plaintiff in the Admiralty*, and the *Defendant* there *moved for a Prohibition in B. R.* It was pray'd that B. R. would not grant it, but would allow the Serjeant his Privilege of its being mov'd for in C. B. But the Court doubted if Privilege ſhould be granted in Prohibition; but Ex aſſenſu Partium it was ordered that the Plaintiff here ſue his Prohibition in C. B. for the Speed of the poor Plaintiff. But upon moving it there, the C. B. refus'd to grant Prohibition, and ſo

it was mov'd again in B. R. And all the Court held that Prohibitions are grantable Ex Debito Juſtitiæ. Sid. 65. pl. 38. Mich. 13 Car. 2. Serjeant Morton's Caſe.

4. An *Attorney of C. B.* was *arreſted in the Palace-Yard* not for from the Hall-Gate, *ſitting the Court, at the Suit of an Attorney of B. R.* and both the Officer and the Priſoner were brought into the Court of C. B. and the Officer was committed to the Fleet, and the other was ſent up to B. R. who being informed of the Caſe, viz. That the Attorney arreſted was indebted to him in 200 l. the Court of B. R. diſcharged the other upon common Bail. 2 Mod. 181. Hill. 28 & 29 Car. 2. Long's Caſe.

5. Clerks of the Court muſt have a *Certificate from the Maſter of the Rolls, or Office where they write*, before a Writ of Privilege be granted them. P. R. C. 285.

6. H. *came to confeſs an Indictment*; and the Court held that he had no Privilege Eundo & Redeundo, becauſe there *was no Proceſs againſt him.* 2 Salk. 544. pl. 6. Hill. 2 Ann. B. R. Anon.

7. Menial Servants of a Maſter, Miniſter, or Officer of the Court, *muſt make firſt Affidavit* that he is ſo: The *Writ* for him muſt firſt be preſented unto and *ſigned by the Lord Keeper, and* the *Affidavit* muſt be at the ſame Time *annexed* to it. And ſuch Writ ſhall continue in Force no longer than he continues Menial Servant. P. R. C. 285.

8. If a *neceſſary Officer*, ſuch as the Chancery cannot be without, as a *Regiſter*, Maſter in Chancery, or ſuch like, be *in Priſon upon Meſne Proceſs*, the Lord Chancellor may enlarge him: *But if* he be *in Execution* for Debt or Damages, he ſhall have no Privilege; for the Plaintiff would be without Remedy if the Party be once ſet at Liberty. But this is to be underſtood with ſome Limitation; for where, by Order of this Court, one was diſcharged by Superſedeas, and the Plaintiff brought an Action of Eſcape againſt the Sheriff, this Court ordered him to diſcharge the Action, and that he ſhould ſtay all Proceedings againſt the Sheriff. P. R. C. 286, 287.

(H) *In what Actions* the Privilege ſhall be granted. Of the Chancery. [*And other Courts.*]

A Clerk of Chancery ſhall not have his Privilege, unleſs he

1. THE Officers and Miniſters of the Chancery ſhall not be impleaded out of the Chancery in any Plea, unleſs it be in Plaint of Land, or of Treaſon or Felony; and if they are they ſhall have their Privilege. 3 H. 6. 30.

brings Writ to B. R. becauſe B. R. is the Superior Court, and if *B. R. be firſt poſſeſs'd of the Action*, the Privilege is not grantable. Per tot. Cur. Mo. 753. pl. 1038. Mich. 2. Jac. Anon.

Hob. 177. pl. 201. Gage's Caſe. ——Gilb. Hiſt. C. B. 170. cites S. C.

2. An Attorney of Bank being an Adminiſtrator, cannot ſue another as Adminiſtrator by Writ of Privilege, becauſe he ſues En Auter Droit, but ought to ſue by Writ original. Hobart's Reports 239. Cage's Caſe adjudged.

For in ſuch Caſe Executors and Adminiſtrators repreſent common Perſons who have not that Privilege.

Indebitatus Aſſumpſit for 100 l. againſt the Defendant

3. So an Attorney being an Executor or Adminiſtrator, cannot be ſued as Executor or Adminiſtrator by Bill, as Attornies are uſed to be ſued, but ought to be ſued by original Writ. Hobart's Reports 139.

as Executor, he pleaded in Abatement that he was an Attorney of C. B. and pray'd his Privilege, but was ruled to anſwer over; for his Privilege extends only to Actions brought againſt him in his own Right. 1. Salk.

1 Salk. 2. pl. 4. Mich. 11 W. 3. B. R. Newton v. Rowland.——12 Mod. 316. S. C. And there it was urg'd on Demurrer, that the Reaſon of Privilege in the Caſe of an Attorney, is by Reaſon of his perſonal Attendance, which is all one whether ſued in his own, or in Auter Droit. But per Holt, The Authorities are of the other Side in this Caſe, and the Plaintiff had Judgment Niſi.——S. P. Where Attorney was ſued as Adminiſtrator. 1 Salk. 7. pl. 18. Hill. 4 Ann. B. R. Lawrence v. Martin.

4. It was doubted if Privilege ſhould be granted *in Prohibitions*. Sid. 65. pl. 38. Mich. 13 Car. 2. in Serjeant Morton's Caſe.

(I) *At what Time* they ſhall pray their Privilege. [*And what ſhall be an admitting the Juriſdiction of a Court.*]

1. **If the Party** has affirm'd the Juriſdiction of the Court where **the Suit is, he ſhall not have his Privilege after.** 11 H. 4. 68. b. Privilege of B. R. as Cuſtos Brevium there, was pleaded *after Bail put in*; and reſolv'd per tot. Cur. That the putting in Bail is no *Submiſſion to the Juriſdiction of the Court*, be it general or ſpecial; for till Bail put in, he is not in Court to plead any Thing, nor is the Plaintiff obliged to declare againſt him. And ſo his Plea of Privilege was allowed. 3 Lev. 333. Daſhwood v. Folkes.

2. **If Privilege be pray'd by Servant of the Chancery** after Verdict, and before Judgment, **it ſhall not be allowed.** 11 H. 4. 68. b. A Man was *found Guilty in London in Treſpaſs*, and before Judgment he *demanded the Privilege, becauſe his Maſter was ſued in Appeal of Murder before he was arreſted in London*, and by Award he had the Privilege; Quod Mirum! For after Anſwer given, without demanding the Privilege, he ought to be ouſted thereof. Br. Privilege, pl. 27. cites 21 H. 7. 39.

A Man was *impleaded in C. B. and* in the Vacation *came to London* 12 *Days before the Term*, and *was arreſted in London and condemned*; and becauſe the other *Writ of Privilege was delivered in London Meſne between Verdict and Judgment*, and notwithſtanding this they gave Judgment in L. and yet becauſe it *appeared by his Oath, that he came to London ſo long before the Term to retain Counſel* in his Matter in Bank, therefore the Privilege was allowed, and the Priſoner diſmiſſed; Quod Nota, after Condemnation, and the Reaſon ſeems to be, inaſmuch as by the firſt Writ of Privilege delivered before Judgment, their Hands were cloſed, and ſo their Judgment after this was void, and ſo ſee Privilege allowed after Plea pleaded. Br. Privilege, pl. 28. cites 38 H. 6. 4.——Br. Judgment, pl. 55 cites S. C

3. **So if the** Inqueſt **was** * **ready** to paſs, **it ſhall not be allowed after upon Prayer. Contra** 11 H. 6 8, 11 H. 6. 8. b. **where the Superſedeas is, that he ſhall not be ſued out of the Chancery againſt his Will; For this is with his Will.** Br. Privilege, pl 54 cites S. C. that the Privilege was allowed. ——

* Orig. is (Priſe) but it ſeems it ſhould be (Priſt)

4. **So if the Party** pleads to Iſſue, **yet he ſhall not have Privilege** before Niſi Prius granted. 11 H. 4. 68. 3 H. 6. 30. Br. Privilege, pl. 3. cites S. C. & P. by Weſtbury.

5. **So** after Demurrer **he ſhall not have Privilege.** 3 H. 6. 30.

6. After Defence made, **the Privilege of the Chancery ſhall be granted, becauſe this is not properly a Plea to the Juriſdiction.** * 3 H. 6. 30. **Adjudged. M. 11 Car. B. R. between** *Reeve and Jacey*, **per Curiam ruled.** * Br. Privilege, pl. 3. S. C.——But in the Caſe of Truſſel v. Maddox.

Sid 318. pl. 8. Hill. 18 & 19 Car. 2. B. R. It was held per Cur. That *after a full Defence* he ſhall never be allowed to ouſt the Court of its Juriſdiction.—S. C cited Lev. 54. in the Caſe of Neabe v. Nelſon, as adjudged. Mich. 18 Car. 2. B. R. in the Caſe of Truſſel v. Maddox. S. C. cited Arg. Freem. Rep. 134. in Caſe of Bone v. Andrews in C. B.

7. After Imparlance to another Term, in the other Term **he ſhall not have the Privilege of the Chancery by Writ.** 20 H. 6. 33. The Imparlance was *Salvis omnibus Allegationibus & Exceptionibus omnimodis tam ad Breve quam ad Narrationem*, and at the Day the Defendant caſt Superſedeas of the Privilege of Chancery, but it was not allowed; becauſe the Imparlance

* allow'd

* affirmed the Juriſdiction of the Court; Quod Nota by Award. Br. Privilege, pl. 15. cites S. C.—— Gilb. Hiſt. of C. B. 170. cites 22 H. 6. 71. [But (71) ſeems to be miſ-printed for (7)] and ſays, that the true reaſon ſeems to be, that by this Imparlance the Defendant had confined himſelf to take Advantage only of the Default in the Writ and Court; But had he obtained from the Court a General Special Imparlance, viz. *Salvis omnibus & Omnimodis Advantagiis & Exceptionibus*, he might then have pleaded his Privilege; For that is not to ouſt the Court of its Juriſdiction, but is a Privilege, which each Court allows to the Officers of the other to be ſued in their own Court only, and the modern Authorities are expreſs, that Privilege may be pleaded after a general ſpecial Imparlance.——* S. P. P. R. C. 286 —— Debt in B. R. againſt an Attorney of C. B. who *imparled* ſpecially, *Salvis ſibi omnibus Exceptionibus*, &c and afterwards pleaded his Privilege. The Plaintiff demurred; Windham and Twiſden held, that this Plea was receivable upon this Imparlance; but adjornatur. And the next Term a Reſpondeas Ouſter was awarded for want of Averment in the Plea; But nothing further was ſaid of the ſpecial Matter. Lev. 54. Hill. 13 & 14 Car 2. B. R. Neave v. Nelſon.——But Mich. 32 Car. 2. B. R. It was held per Cur. that Plea of Privilege comes too late after Imparlance. 2 Show. 145. Jenkes v. Lyon. S. P. Raym. 34. Barrington v. Venables.

In Debt upon Bond, the Defendant in propria Perſona imparled, viz. Salvis ſibi omnibus & Omnimodis Exceptionibus & Advantagiis *tam ad Juriſdictionem Curiæ quam ad Breve &c.* and then pleaded his Privilege as one of the Clerks of the Exchequer. Exception was taken thereto, that ſuch Imparlance Ad Juriſdictionem Curiæ never was ſeen. And the Court ſaid, that ſuch Imparlance ought not to have been granted by a Prothonotary, and thereupon awarded a Reſpondeas Ouſter; But they reſolved, that if the Imparlance had been as in **Clapham's Caſe**, Hard. 365. before the Plea, it had been good. Lutw. 43 to 46. Paſch. 13 W. 3. C. B. Wentworth v. Squibb.—*Treſpaſs againſt divers; all imparled except one*, and after *at the Day, the one, who did not imparl, appeared by Attorney and imparled*, and after Secente Curia caſt Superſedeas of the Chancery, becauſe he was Servant of the Chancellor; and it was not adjudged whether he ſhall have the Privilege or not, becauſe others are joined. Br. Privilege, pl. 7. cites 20 H. 6. 32.

A. ſued B. in an Action of Battery in *London*. B. removes it by *Habeas Corpus* to the King's-Bench, and the Term after prays an Imparlance, and before the end of the Term prays the Privilege of the Exchequer; The Puiſne Baron comes *with the Red Book*, and ſhews, that B. is Eſcheator, and ſo an Accomptant to the King, and at length Privilege was allowed. Noy. 40. Walrend v. Winroll.

Fol. 276.

8. So, **after Imparlance** to another Day in the ſame Term, **he ſhall not have the Privilege by Writ.** 20 H. 6. 32. b. **Dubitatur.**

9. After Imparlance in B. R. by a Servant of one of the Examiners in Chancery being Defendant, **if he pleads his Privilege of the Chancery, he ſhall not have it.** M. 1651. **between** *Fiſh and Kennedy*, **per Curiam adjudged. Intratur. Tr.** 1651. **Rot.** 1260.

In *Treſpaſs, at the Exigent* it is admitted, that the Defendant may have *Privilege of B. R.* at this time; *but in Debt* he ſhall *not* have Privilege of B. R. *For Debt does not lie there.* Br. Privilege, pl. 40. cites 10 E. 4. 4.

10. At the Exigent returned upon Proceſs, **Defendant ſhall have the Privilege of the Chancery.** 20 H. 6. 26.

A *Clerk* of the Chancery was *ſued* in Bank, and Proceſs continued *to the Exigent*; the Clerk *ſued a Superſedeas* to the Sheriff, *Quia Improvide*, and after *ſued a Writ of Privilege directed to the Juſtices of the Bank*, requiring them to ſurceaſe; and upon a long Debate his Privilege was diſallowed, and he driven to anſwer; For the Court was lawfully ſeiſed of the Plea by the Defendant's own Act, in as much as he had, by *the Superſedeas, affirmed the Juriſdiction* of the Court; for every Superſedeas Quia Improvide recites an Appearnce in Court of the Defendant by Attorney, and ſhews his Name; ſo that this is his own Default. *But if he had not ſued ſuch Writ*, notwithſtanding the Exigent, the Privilege ſhould have been allowed, and of this there were Precedents ſhewn, and then after the Writ of Privilege comes to the Juſtices, they ought to make a *ſpecial Superſedeas* of the Outlawry to the Sheriff, reciting the Privilege. Et ſic nota diverſitatem bene. D. 33. pl. 18. Paſch. 28 & 29 H. 8. Anon.

11. **At the Exigent returned,** and after Mainprize found upon it, **Defendant ſhall not have the Privilege of the Chancery, becauſe by the Mainprize he has affirmed the Juriſdiction.** 20 H. 6. 26. **Quære.**

12. After Iſſue when the Inqueſt is ready at the Bar, **if an** abſolute Superſedeas comes out of the Chancery, **certifying that Defendant is a Clerk there, and commands them to ſurceaſe, it ſhall be allowed.** 11 H. 6. 8.

13. He, who is *arreſted meſne between the Teſte of the Original and the Return* ſhall have the Privilege, if the Writ be returned after; For this ſhall have Relation to the Teſte. Br. Privilege, pl. 4. cites 9 H. 6. 7.

14. Treſpaſs againſt the Baron and Feme, the *Baron caſt Writ of Privilege for him and his Feme, becauſe he was Servant to the Chancellor*; and it was alleged, that *pending the Suit the Chancellor was removed from his Office*; but this was not regarded; For if he *had once a good Cauſe of*

Privilege

Privilege, the Act of a 3d Perſon ſhall not prejudice him. Br. Privilege, pl. 9. cites 34 H. 6. 29.

15. A Man was *impleaded at London long before the Term*, and was arreſted, and found Mainpriſe, and *at the Term after an Original* and Suit *was taken againſt the Defendant at Weſtminſter in C. B.* and the *Plaintiff declared*, and the *Defendant imparled*, and ſued Writ of Privilege, and had the Privilege, notwithſtanding that the Suit in L. was the Prior Suit, becauſe it was not adjudg'd by Recovery, nor Condemnation, but is pending yet in L. not diſcuſſed; but if he had been *condemned in L.* he ſhould not have the Privilege; Quod Nota Diverſity. Br. Privilege, pl. 36. cites 5 E. 4. 44.

If a Man is *condemned in London in the Time of Vacation, and has Execution in the Term*, when the Defendant has Cauſe of Privilege, yet this ſhall not diſmiſs the Execution. Br. Privilege, pl. 37. cites 2 E. 4. 8.

16. Littleton Juſtice, ſaid, that one *appeared by Cepi Corpus and found Mainpriſe, and before the Day* which he had, he *was arreſted in London*, and was *brought into B. R. by Corpus cum Cauſa*, at which Day the *Plaintiff was Nonſuited*, and the Defendant diſmiſſed of the Serjeant; For the *Plaint*, upon which he was arreſted, *was taken after the Impriſonment in Bank*. Br. Privilege, pl. 24. cites 9 E. 4. 47.

But if the Plaint and *Arreſt in L.* had been *before the Impriſonment here*, he ſhould have been remitted. Ibid.

17. Any Plea of Privilege is good to a Declaration againſt one *in Cuſtodia Mar.* if he be *there wrongfully*; As if an *Attorney of C. B.* be arreſted in a Latitat, and is *in Cuſtody* of the Marſhal *for want of Bail*, *or* ſuppoſe he *puts in Bail*, it ſhall not hinder him of pleading his Privilege; becauſe he can't plead 'till he puts in Bail, if he be not in actual Cuſtody; and if we give Judgment, it muſt be for the Defendant. Per Holt Ch. J. 12 Mod. 535, 536. Trin. 13 W. 3. B. R. Wilbraham v. Lownds.

(K) Proceedings, and Pleadings.

1. BILL was brought *againſt the Cuſtos Brevium, becauſe the Sheriff of S. returned a Capias Utlagatum, which the ſaid Defendant embezzel'd*; And Exception was taken, becauſe he is *not named Now Cuſtos*; & non Allocatur, becauſe it *appears by the Return that he is yet Cuſtos*, and then Bill lies. And another *Exception was taken, becauſe he embezzel'd it at D. in London, and that Bill lies not but of an Act done in the ſame County where the Court is.* And Skrene offer'd to demur, becauſe the Bill lies by his Pretence. Br. Bille, pl. 4. cites 7 H. 4. 5.

2. Bill of Debt was ſuch, viz. J. S. *petit de W. M. uno Attornat. de* &c. and the Bill was challeng'd becauſe it *ſhould be unum Attornatum* &c. and the Bill awarded good. Brook ſays, Quære what is intended; for it is ill reported. Br. Bill. pl. 8. cites 7 H. 6. 43.

3. In Debt the Defendant caſt Superſedeas of Privilege of the Chancery, and ſaid, That the Day of the Writ purchaſed he was *menial Servant of* E. Biſhop of B. *Chancellor* of England, and yet is; therefore he demanded Judgment if the Court will take Conuſance; and the *Plaintiff ſaid*, That the *Defendant was not Servant* of the Chancellor the *Day of the Writ purchaſed, nor ever after*; And for Want of Defence demanded Judgment; and the *Defendant demanded Judgment, becauſe the King recorded that he is Servant* of the Chancellor, *Ut Accepimus*; And yet becauſe the Plaintiff had traverſed the Defence directly, to which he anſwered nothing, therefore it was awarded, That the Defendant anſwer without the Privilege; Quod nota. Br. Privilege, pl. 13. cites 21 H. 6. 20.

4. The Plaintiff ſaid, That whereas it is contained in the *Writ*, that he *is menial Servant* of R. S. Burchier of the Chancery, he is *not menial Servant*, *Priſt*; and the other e contra. Br. Privilege, pl. 17. cites 22 H. 6. 38.

5. In Treſpaſs the Defendant caſt a Superſedeas of the Privilege of the Exchequer, and *alleg'd the Uſage, that the Officers there, nor their Servants* &c. *have not been impleaded elſewhere* but in the Exchequer, and that he is Servant of an Officer &c. The *Plaintiff ſaid, That* the Officers and their Servants attending at the Office have uſed to have ſuch Privileges, and that *the Defendant is Servant in Husbandry in the Country*, Abſque hoc *that he is Attendant* &c. And the Opinion of Priſot was, That this is a * good Iſſue; which none deny'd but Laken, who was for the Defendant, and ſo he *travers'd more than was tender'd*; But quære if he ought not to traverſe *Abſque that the Privilege extends to all Servants*, Prout &c. Br. Traverſe per &c. pl. 27. cites 34 H. 6. 15.

* For per Priſot the Preſcription is not alleg'd for All Servants, therefore he may well ſay as here, and *ſhew that ſuch Servants ſhall have Privilege, and the others not*, and traverſe as here, *without traverſing the Preſcription.* Br. Privilege, pl. 8. cites S. C.— Br. Preſcription, pl. 7. cites S. C.

6. *Bill againſt a Sheriff in the Exchequer upon his Account* ſhall abate if he be *not named Sheriff*, et ratione Officii ſui ſcilicet verſus J. O. quondam Vicecomitem N. qui præſens hic in Curia ſuper compoto ſuo, ratione Officii ſui. Br. Bille, pl. 42. cites 37 H. 6. 39.

7. If *Bill of Debt* is brought *by an Attorney* upon the Privilege, the Defendant may ſay, That he *is not named Attorney in the Bill*, Judgment of the Bill, and a good Plea; Contra, if he ſues by Writ. Note the Diverſity. Br. Brief, pl. 342. cites 3 E. 4. 26.

Br. Bille, pl. 16. cites S. C. — Br. Noſme, pl. 26. cites S. C.

8. If one demands Privilege *as Warden of the Fleet*, becauſe he is Officer of the Court; it ſuffices if he be named Warden, tho' he *does not ſhew How he is Warden*, As in Jure uxoris, or by Leaſe for Years &c. but it ſuffices by Name of Warden only. Br. Privilege, pl. 23. cites 9 E. 4. 40.

Br. Privilege, pl. 40. cites S. C.

9. In Treſpaſs the Defendant pleaded Privilege as Servant of a Filazer, and *Iſſue was taken, If the Party was Servant Attendant on the Filazer*, or not, at the Time &c. And ſo ſee that the Iſſue is peremptory; for it is triable per Pais. Br. Peremptory, pl. 48. cites 10 E. 4. 4.

10. An *Attorney* of C. B. *brought an Action* there againſt a Stranger *by Attachment of Privilege*, and had a Verdict; But upon a Writ of Error brought, the Judgment was reverſed for *want of finding Pledges De Proſequendo*, tho' ſeveral Precedents were ſhewn, that an Attorney need not, becauſe he is ſuppoſed always preſent in Court. And the Words of Si Querens fecerit te Securum de Clamore ſuo &c. were wanting in the Attachment of Privilege. D. 288. pl. 53. Paſch. 12 Eliz. Floteman v. Bygot.

11. It was agreed, That all *Proceedings in an inferior Court after a Writ of Privilege* delivered out of this Court *are void*, & Coram non Judice; and if they award Execution, this Court will diſcharge the Party. 2 Brownl. 101. Mich. 9 Jac. Anon.

12. Error was brought of a Judgment in C. B. *in Debt* on an Arbitration Bond *by an Attorney* of C. B. and *Judgment* upon Demurrer given for the Defendant, *Quod querens nil Capiat per Breve*; whereas the Action was brought by Bill of Privilege, and not by an Original Writ; and therefore it ought to be Nil Capiat *per Billam.* This was held a manifeſt Error, becauſe it was in the Judgment, which is the Act of the Court, and ſo not to be accounted the Miſpriſion of the Clerk. Cro. C. 580. Paſch. 16 Car. B. R. Reymond v. Bembridge.

Hard. 164. S. C. by the Name of Barrington's Caſe. And there the

13. In Aſſumpſit &c. the Defendant pleaded his Privilege as *Auditor of the Exchequer*, in theſe Words, ſc. *That the Barons of the Exchequer, their Clerks, nor other Officers of the Exchequer, are not to be impleaded elſewhere.* The Plaintiff demurred to this Plea, 1ſt, Becauſe the Privilege was pleaded in the Negative, for 'tis, that they are not to be impleaded

pleaded elſewhere, without ſhewing that they have been uſed to be ſued there. 2dly, 'Tis too general to ſay, That the Barons and their Clerks are not to be ſued elſewhere; for that doth not prove but that one of their Clerks may be ſued elſewhere; And this was held ill according to the Exception. It was inſiſted, That there was a Diverſity between inferior Courts and the Courts of Weſtminſter; that tho' Privilege of inferior Courts muſt be pleaded preciſely, yet Privilege of the Exchequer, which is one of the 4 Great Courts, need not, the Cuſtoms of thoſe Courts being Laws whereof all other Courts take Notice without pleading them. But Per Cur. Plea to the Juriſdiction muſt be preciſe. 2 Sid. 164. Hill. 1659. B.R. Foſter v. Barrington.

Plea has the Word (Omnes) viz. That all the Barons &c. And there Exception was likewiſe taken for not averring his Plea as he ought, becauſe it is iſſuable whether he is

the ſame Perſon who is Auditor there; And to this Opinion the Court ſeemed to incline; but the Plaintiff's Council ſaid, That the Precedents in the Exchequer were without any ſuch Averment; And they made a Difference betwixt the Officers or Clerks of Courts, who are upon Record there, and their Servants, who are not. Et Adjornatur. ——— In Debt upon an Obligation brought againſt the Defendant, he pleaded the Privilege of the Exchequer; And it was ſaid by Mr. Juſtice (John) Powel, That the Defendant needed not to have pleaded it, but that it was to be *allow'd upon producing the Red Book of the Exchequer*. Lutw. 46. Paſch. 13 W. 3. in the Caſe of Wentworth v. Squibb.

The Plea, that omnes Attornati of C B. ought to be impleaded there, and not elſewhere, was held ill, and a Reſpondeas Ouſter awarded. Lutw. 639. Paſch. 12 W. 3. Camfield v. Warren.

14. The *Cuſtom of C. B. concerning Privilege* was *certified to B. R. by the Secondaries*, and therefore was refus'd; for it ought to be certified by the Prothonotaries, Sid. 65. pl. 38. Mich. 13 Car. 2. Serjeant Morton's Caſe.

15. An Information was exhibited againſt the *Cuſtos Brevium* of B. R. for Abuſes and Miſdemeanors in his Office. He refus'd at firſt to appear in Perſon, but would have appeared by Attorney. The Opinion of the Court was, that he *cannot appear by Attorney*, becauſe he is an Officer of the Court, and preſumed to be always preſent. It was agreed that no Proceſs ſhould iſſue againſt him, but that *upon the reading the Information, if he doth not appear Judgment ſhall be given* againſt him. Sid. 134. pl. 8. Paſch. 15 Car. 2. B. R. The King v. Paget.

But in Treſpaſs againſt an Attorney of C. B. he *pleaded his Privilege per Attornatum*. The *Plaintiff demurr'd*, becauſe he ought to

have pleaded it in Propria perſona; for pleading it by Attorney deſtroys the very Reaſon of his Privilege, which is his attending the Court in Perſon; but the Opinion of the Court was, that an Attorney may plead his Privilege by an Attorney, and no Inconvenience follows it; for he may be ſick or have Buſineſs in another Court, which he muſt neceſſarily attend. It is true the Precedents are both Ways. The Plea was allowed Niſi. Sty. 413. Hill. 1654. Higgs v. Harriſon.

16. In Debt upon an Eſcape after Execution, the Deſendant appeared, Et deſendit vim & injuriam quando &c. and imparl'd ſpecially, ſaving to himſelf all Advantages and Exceptions Quoad Billam præd. and whether after ſuch Imparlance he muſt be allow'd his Privilege as Marſhal of B. R.? The Court held, That after ſuch Defence Privilege may be allowed; for it is not a full Defence, nor does he go about to ouſt the Court of Juriſdiction, but only claims his Privilege. Likewiſe after a ſpecial Imparlance of *Salvis omnibus* Advantagiis & Exceptionibus, a Man ſhall have his Privilege; but if the Imparlance be *ſpecial Quoad Billam breve ſeu Narrationem*, it ſhall not be extended farther; and after ſuch Imparlance Privilege is not allowable, as appears 22 H. 6. 7. 9 E. 4. 53. But upon Defendant's Prayer it was adjourned. Hard. 365. Paſch. 16 Car. 2. in the Exchequer, Clapham v. Sir J. Lenthall.

17. The *Privilege of Chancery was pleaded by Way of Preſcription*; and upon Demurrer it was held ill. 1ſt. Becauſe he did *not conclude* his Plea with *Et hoc paratus eſt verificare*. And 2dly. *No Place was alleg'd*; for they are * Matters of Fact, and triable. 1 Vent. 264. Mich. 26 Car. 2. B. R. Fawkener v. Annis.

In Indebitatus the Defendant pleaded Cuſtom of Chancery, *that all Pleas*

concerning the Chancellor, and any the Clerks of the Chancery, *ought to be pleaded and determined Coram Cancellario*, and not elſewhere, and avers he is a Clerk of the Inrolment Office, Unde non intendit quod Curia

Curia cognoſcere vult, but not ſaying Prout patet per Recordum, nor where the Chancery is; which per Curiam is ill, and as to the Chancellor, it is void; However, becauſe he cannot be Judge and Party, a Reſpondeas Ouſter was awarded, and it ſhould be only that they ought to be impleaded, without ſaying, to be determined there; for Iſſues between Chancery-men are triable at Common Law, and the Plea muſt be averr'd, as was adjudged in **Levingſtone**'s Caſe. 3 Keb. 352. Mich. 22 Car. 2. Fawkener v. Annis.—All Proceedings in the Petty-Bag Office in Chancery, by or againſt any Miniſter of this Court for any Matter or Thing determinable at Common Law, are to be *pleaded to Iſſue as at Common Law*; *and the Record* thereof to be *delivered Per manus Cancellarii into B.R. or C.B. at the Election of the Plaintiff*. And *after Trial* had, the *Record ſhall be remanded into this Court*, and Judgment ſhall be given here. P. R. C. 291. ——* Per Cur. Contra, that it is a Matter of Law, and not triable per Pais, nor traverſable. 1 Salk. 30 Trin. 7 W. 3. B. R. Kirkham v. Wheeler.——2 Salk. 543. S. C. and P.

Skin. 582. S. C. ſays the Defendant pleaded his Privilege in this Manner, viz. *Et prædict. Def. dicit*, without ſaying *Venit & dicit*, or *making any Defence*; where Dicit without Venit might be Ore tenus &c. but Non Allocatur, he being *in Cuſtodia Mar.* and *before another Day of Continuance*; but if it was at another Day of Continuance after the Day of Appearance, it ought to be Venit & dicit; but for the Want of Defence the Court did not ſeem to regard it; and in the Caſe of **Reckwith and Wheeley** this Term, where the Defendant pleaded his Privilege as Attorney of C. B. and made no Defence Holt Ch. J. ſaid it was a Chip in Porridge. Skin. 582. Trin 7 W. 3. B. R. Stevens and Squire.——*And* Holt Ch. J. ſaid in this Caſe, that if a Prothonotary or other who is a *Perſon privileged by Record*, pleads his Privilege, and brings a *Writ of Privilege* atteſting it, that this is concluſive, and the Plaintiff may *not traverſe it*; but otherwiſe it is of a *Clerk* or Servant *to ſuch Perſon* ſo privileged. Skin. 582. S. C.

18. In Caſe againſt an Attorney he pleaded his Privilege thus, viz. *Et prædictus A. in propria perſona ſua dicit quod ipſe eſt & prædicto tempore exhibitionis Billæ ipſius Thomæ* Stephens *fuit unus Clericorum Tho. Winford Ar. un. Pronotar. Curiæ Domini Regis de Banco apud Weſtm. in Com. Midd. in Officio ſuo quotidie intenden.* and *concluded with an Averment generally, without annexing any Writ of Privilege* to his Plea. To this the Plaintiff demurr'd generally, and two Objections were made to this Plea. 1ſt. For that the Defendant did *not ſay* * *Venit* as well as Dicit, ſo he was not in Court when he pleaded. 2dly. For that he had *not laid any Viſne*, ſo as the Fact of his being a Prothonotary's Clerk might be tried; for it is a Matter iſſuable, and the rather becauſe the Defendant hath not ſhewed any Matter of Record to prove his Privilege. Et per Curiam, Both the Objections were allowed, and the laſt was fatal, becauſe this is Matter of Fact triable by a Jury; for Prothonotaries Clerks are not inroll'd, wherefore it is neceſſary to lay a Viſne in this Plea. Judgment for the Plaintiff, (viz.) that the Defendant anſwer over. Carth. 362, 363. Mich. 7 W. 3. B. R. Stephens v. Squire.

* Per Cur. Venit is no Part of the Plea, but Dicit begins the Plea. The Dicit alone ſhews him to be in Court; and here it appears that he is in Cuſtodia. 2 Salk. 544. pl. 2. Trin. 7 W. 3. B. R. Stephens v. Arthur, ſeems to be S. C.

To an *Action qui tam* &c. the Defendant *pleaded* that *he is an Attorney* of the Court of C. B. *and that Attornies of C. B. are not ſuable elſewhere.* The Plaintiff demurr'd. 1ſt. Becauſe this Plea is only in the *Negative*, and no Juriſdiction is given to any other Court. 2dly, Becauſe there is *no Defence by Venit but Dicit only*. Per Cur. As to the Plea being in the Negative, it is well enough; for the Privilege is not traverſable and triable per pais, but a Matter of Law of which we take Notice; and Venit & Dicit only are ſufficient Defence in this Caſe. 2 Salk. 543. Trin. 7 W. 3. B. R. Kirkham v. Wheeley.

If he is actually in Cuſtody, he is liable to all Actions, but if he be here only upon Bail, he may plead his Privilege; for the Sheriff cannot take Notice of his Privilege, ſo that he muſt give Bail. Per Holt Ch. J. Salk. 1. pl 1. S. C.

19. A *privileged Perſon in the Common Bench* may be in *Cuſtody of the Marſhal*; for he may either *waive or miſplead* his Privilege; and if he be actually *in Cuſtody*, and it appears ſo by Pleading, he cannot have his Privilege. 12 Mod. 102. Mich. 8 W. 3. Duncomb v. Church.

20. *And* if *one plead an exempt Juriſdiction from all the Courts of Weſtminſter*, and *not to be ſued but in ſuch particular Courts and Franchiſes*, there you muſt ſhew that they have a Juriſdiction of the Matter, and that the Cauſe ariſes within their Juriſdiction. Special Imparlance ſhould not be allowed without the Leave of the Court and Conſent of the Parties. 12 Mod. 102. Duncomb v. Church.

21. Defendant pleaded *that he is one of the Attornies of the Court of B. R.* without ſaying *that he was at the Time of the Writ* purchaſed, and a Re-

a Reſpondeas Ouſter was awarded. 1 Salk. 1. Mich. 8 W. 3. B. R. Peaſe v. Parſons.

22. Defendant pleaded that he was an *Attorney* of the C. B. and ought not to be ſued elſewhere without his Conſent; the Plaintiff replied, that he *did conſent* &c. *but laid no Venue where*; and therefore bad. Per Cur. 1 Salk. 4. Mich. 1 Ann. B. R. Ode v. Norcliffe. 7 Mod. 97. S. C

23. The Defendant *pleaded Privilege of C. B. in Abatement, without concluding to the Record.* Holt ſaid he need not do it, but he may leave Plaintiff at Liberty to reply, and deny his being a Perſon privileged there, which Plaintiff can't do if Defendant conclude to the Record, and his not ſaying *Prout patet* is no good Cauſe of a general Demurrer, and upon Prout patet per Recordum, there ſhall go a Certiorari to certify the Record; and if they produce one and ſhew that they have Privilege, the Plaintiff is eſtopp'd. 7 Mod. 106. Mich. 1 Ann. in B. R. Clifton and Swezeland.

24. In Debt upon Bond brought in B. R. the Defendant *pleaded* his Privilege as Attorney of the Court of C. B. &c. and that there is *a Cuſtom* in that Court, *that no Attorney of this Court ſhall be compell'd to anſwer by Original Writ, unleſs he is forejudged.* The Plaintiff *replied, that for five Years laſt paſt*, before the Original filed, the *Defendant had withdrawn himſelf from* the Office and *Practice of an Attorney.* Upon a Demurrer to this Replication, it was objected, 1ſt. Againſt the Plea, that the Defendant did not ſet forth that he had any Clients, whoſe Suits he proſecuted or defended; for the Reaſon why an Attorney ſhould have his Privilege is, that he might be attendant on the Buſineſs of his Clients; and when the Reaſon ceaſes, the Privilege ceaſes. 2dly. That he had alleged this Cuſtom In Fieri, and not In Facto; for it is that an Attorney ſhould not be compell'd to anſwer &c. whereas he ſhould have gone on and alleged, Nec a tempore quo &c. For Uſage in Fact is eſſential to every Cuſtom, Compelli conſuevit. But the Opinion of the Court was, as to the firſt Objection, That the Plea prima facie was good, and not avoided by the Replication, and that as long as the Defendant is an Attorney upon Record, he ought to have his Privilege. And as to the 2d Objection, it was ſaid, the Court would take Notice of the Privilege of Attornies of the Court, and therefore the Cuſtom need not to be ſo ſtrictly alleged as other Cuſtoms. And Judgment was given for the Defendant. 2 Lutw. 1664. Hill. 2 Ann. C. B. Routh v. Weddell.

It was mov'd that the Defendant ſhould put in Special Bail, he being an Attorney at large, and having diſcontinued his Practice; but the Court ſaid, that *Attornies at large* have the ſame Privilege with the Clerks of the Court, and are to appear De Die in Diem. And they were not ſatisfied that he had diſcontinued his Practice. Vent. 1. Mich. 20 Car. 2. B. R. Sir John How v. Woolley.

25. An *Attorney of C. B. being ſued in B. R. pleaded his Privilege.* Plaintiff demurr'd ſpecially, becauſe he did *not conclude with a Profert hic in Curia* of a Writ of Privilege, teſtifying his being an Attorney &c. Per Holt Ch. J. The Difference is, if the Privilege of an Attorney be pleaded with a Writ, the Defendant cannot be denied to be an Attorney; but if without he may, and then a Certiorari ſhall be awarded to certify whether he be an Attorney or not. 2 Salk. 545. Trin. 2 Ann. B. R. Dillon v. Harper.

To a Plea that he was an Attorney of C. B. it was objected on Demurrer, That he ought to produce his Writ, and conclude with a Prout pater per Recordum; and alſo that he laid no Venue, alleging no Place where he was Attorney, nor where the Court of C. B. ſits. Et per Cur. viz. Holt Ch. J. to which the reſt aſſented, An Attorney may plead Privilege with a Profert of his Writ, if he will, or with an Exemplification of the Record of his Admiſſion, or he may plead it as he does here, and it is well enough; for ſo are the Precedents, and the Plaintiff may reply Nul tiel Record 3dly. There was no Need of a Venue to try where he was Attorney, for it being a Matter concerning his Perſon, was triable where the Writ is brought. As to the 3d He wonder'd how that ever came to be allowed; for that this Court ſends Writs to the Ch. J. of the C. B. by that Name; and unleſs where this is held to be Part of the Deſcription of a Record, it can never be neceſſary. 2 Salk. 545. Scawen v. Garret.

26. The Defendant *pleaded* in Abatement, that *Tempore quo Memoria non extat*, all the *Clerks of the Queen's Court of Exchequer were privileged from being ſued elſewhere* than in that Court; and *that the Defendant was*

Clerk to R. P. uno Baron. de Scaccario noſtro prædicto. Upon Demurrer the Court held, That there were *two Ways of pleading Privilege*; *one* is *to go to Iſſue, and* if the Party is an Officer on Record, *to ſhew it by producing the Record*; if he is no Officer of Record, but attendant on one of the Barons, that muſt of Neceſſity be tried by a Jury, becauſe the Court of Exchequer, as a Court, cannot take Notice of it any more than we. The *other Way is, if he be an Officer on Record,* then *to produce a Writ of Privilege at the Time of the Plea pleaded,* and then no Iſſue can be join'd upon it; but here the Cuſtom is ill pleaded; for Tempore quo non extat Memoria is Nonſenſe, and it ſhould be Cujus contrarii Memoria non &c. But he having ſhew'd that he is one of the Clerks of a Baron, the Court ask'd whether they ought not to take Notice that he ought to have Privilege? But it being anſwer'd, That he did *not aver that he was Clerk to one of the Barons of the Queen's Exchequer, but De Scaccario noſtro,* a Reſpondeas Ouſter was awarded. 6 Mod. 305. Mich 3 Ann. B. R. Phipps v. Jackſon.

27. If any who have Privilege of Chancery be arreſted in a civil Plea by the Proceſs of any other Court, he may have a *Writ of Privilege,* containing an abſolute Superſedeas, and requiring the Plaintiff, *Quod ſequatur in Curia Ubi* &c. *ſi voluerit.* P. R. C. 284.

28. Privileged Perſons have their *Writs ſealed without Fees.* P. R. C. 285.

For more of Privilege in General, See **Arreſt, Attorney, Parliament, Peers,** and other proper Titles.

No such title in Kitchen as Arrest.

Privity.

(A.) The *ſeveral Sorts* of Privities and Privies, and *of what they may take Advantage.*

1. PRivity of Blood ſhall *not* be *between* two of *Half-blood.* Br. Entre Cong. pl. 27. cites 21 E. 3. 1. 2.

2. Treſpaſs *againſt two,* and the *one appears firſt,* and the *Plaintiff counts,* and *after the other* Defendant *appears,* and the *Plaintiff counts of another Day,* and yet *he ſhall not take Advantage of the Count affirmed by his Companion*; contrary of Plea to the Writ, Releaſe, Diſcontinuance &c. For *he is Privy to the Writ, but not to the Count.* Br. Treſpaſs, pl. 56. cites 46 E. 3. 25.

3. There *is no Privity* between the *Incumbent of the Biſhop who is collated by Lapſe, and the Biſhop,* as there is between the *Maſter and Servant.* Br. Incumbent, pl. 12. cites 16 H. 7. 6.

4. There are three Sorts of Privities, viz. Privity in *Eſtate,* in *Blood,* and in *Law.* Privies in *Blood are* intended of Privies in Blood inheritable, and this is in three Manners, viz. *inheritable as General Heir,* or as *Special Heir,* or as *General and Special* Heir. Privies *in Eſtate* are as Joint-tenants, Baron and Feme, Donor and Donee, Leſſor and Leſſee &c. Privies *in Law* are when the Law without Blood or Privity of Eſtate caſts the Land upon one, or makes his Entry lawful as Lord by Eſcheat, Lord that enters for Mortmain, Lord of Villein &c. 8 Rep. 42. b. Hill. 45 Eliz. Whittingham's Caſe.

S. C. cited per Jones J. Jo. 32. in Caſe of Godfrey v. Wade. —— There are three other Sorts of Privities, viz. in reſpect of *Eſtate* only, *Contract* only, *Eſtate and Contract* together. Privity *of Eſtate* is, As if the *Leſſor grants over his Reverſion,* (*or* if the *Reverſion eſcheat.*) Now between the Grantee (or the Lord by Eſcheat) and the Leſſee, there

there is Privity in Eſtate only. So between the *Leſſor and Aſſignee of Leſſee*; For no Contract was made between them. Privity *of Contract* only, is perſonal Privity, and extends only to the Perſon of the Leſſor, and to the Perſon of the Leſſee, as in the principal Caſe when the Leſſee aſſigned over his Intereſt, notwithſtanding his Aſſignment the Privity of the Contract remained between them, though Privity of the Eſtate be removed by the Act of the Leſſee himſelf; and the reaſon of this is, firſt, becauſe the Leſſee himſelf ſhall not prevent by his own Act ſuch Remedy which the Leſſor had againſt him by his own Contract, but when the Leſſor granted over his Reverſion, there, againſt his own Grant he cannot have Remedy; becauſe he has granted the Reverſion to the other, to which the Rent is incident. 2dly, The Leſſee may grant the Term to a poor Man, who ſhall not be able to manure the Land, and who will by Indigence, or for Malice permit it to lie freſh, and then the Leſſor ſhall be without Remedy, either by Diſtreſs, or by Action of Debt, which ſhall be inconvenient, and will concern in Effect every Man, (becauſe for the moſt part every Man is a Leſſor, or a Leſſee;) and for thoſe two Reaſons all the Caſes of Entry by Tort, Eviction, Suſpenſion, and Apportionment of the Rent are anſwered; For in ſuch Caſes it is either the Act of the Leſſor himſelf, or the Act of a Stranger, and in none of the ſaid Caſes, the ſole Act of the Leſſee himſelf ſhall prevent the Leſſor of his Remedy, and will introduce ſuch Inconvenience as has been ſaid. Privity *of Contract and Eſtate* together, is between the Leſſor and Leſſee himſelf. 3 Rep. 23. Hill. 29 Eliz. in Walker's Caſe.——Lat. 260. Iremonger v. Newſam S. P.

5. *Privies inheritable*, As Heir General, *ſhall take Benefit of the Infancy*, as if Infant Tenant in Fee Simple makes Feoffment and dies, his Heir ſhall enter. The ſame Law of him that is Heir General and Special, and alſo of him that is Heir Special and not General. But Privies *in Eſtate* (unleſs in ſome ſpecial Caſes) *ſhall not* take Advantage of the Infancy of the other. 8 Rep. 42. b. 43. Whittingham's Caſe.

Privies in Blood ſhall take Advantage of Nonage or Coverture, but *not* Privies *in Law nor* Privies in *Eſtate*. Arg. 3 Buls. 272. cites 8 Rep. 42. Whittingham's Caſe.

6. A *Surrender by an Ideot* of an Eſtate for Life to deſtroy a Contingent Remainder is void ab initio, and therefore any Perſon may take Advantage of it, as well Privy in Eſtate as Heir at Law. *But* a *Feoffment and Livery* made *Propriis Manibus of the Ideot* not being merely void, makes a Difference. Carth. 436. Hill. 9 W. 3. B. R. Thompſon v. Leech.

For more of Privity in General, See **Aid, Aſſignment, Confirmation, Covenant, Deſcent, Fines** (X. 2) and other proper Titles.

Proceſs.

(A) *Judicial.* *How* it ought to be *made.*

1. IF an Action **of Battery be brought** againſt B. C. and D. **and** J. S. and J. D. are Bail by Recognizance for B. and C. **and** not for D. **and after Judgment againſt B. C. and D. for Coſts and Damages a** Scire Facias **is ſued to have Execution againſt** J. S. and J. D. **the Bail, and the Scire Facias** recites the Action and Judgment againſt B. C. and D. and that they were Bail for B. and C. and that the ſaid B. and C. have not ſatisfied **the Judgment,** nor rendered **themſelves to the Priſon, and therefore they ſhall ſhew Cauſe why Execution ſhall not be awarded againſt them, and the Scire Facias is not, that D. againſt whom the Judgment is alſo, has not ſatisfied the Judgment as it may be that he has, nor that B. and C. has not**

not ſatisfied it Nec eorum aliquis, as is uſual, yet this is a good Writ; For in as much as they were Bail only for B. and C. it is ſufficient to ſay, according to the Condition of the Recognizance, that they have not rendered themſelves to Priſon, without ſaying Nec eorum aliquis, and without ſaying nor the ſaid D for if B. or C. have paid it, it is the Payment of both; And if D. has paid it, it ought to come of the other Part to be ſhewn. P. 11 Car. B. R. between *Barnes and Hill.* Adjudged upon a Demurrer. Intratur. Hill. 10 Car. Rot. 897.

2. *Debt by the Executors of one Parſon againſt another* Parſon *upon Arrears of Annuity arrear in the time of their Teſtator*, the *Defendant ſaid, That he found his Church diſcharged*, and *prayed Aid of the Patron and Ordinary*, and had it. The Prothonotary was in a Doubt, if he ſhould make the *Summons ad Auxiliand' to the Sheriff of L. where the Writ was brought, or to the Sheriff of E. where the Church was*; And per Martin and Hals, becauſe this is *a Judicial Proceſs* he ſhall purſue the Original, and it ſhall be brought firſt *in the County where the Original is brought*, and if they are *returned Nihil* there, then Proceſs ſhall be made *upon a Teſtatum* to a Foreign County. Br. Proceſs, pl. 3. cites 2 H. 6. 8.

Fol. 277. (B) *Diſtringas.* Diſtringas *upon Teſtatum* at the Common Law.

1. UPON a Diſtringas, if the Sheriff returns a Nihil upon a Teſtatum of Aſſets in other County, by which he may be diſtrained, a Diſtringas ſhall iſſue into the other County; For otherwiſe there ſhould be a Failure of Right. 3 H. 4. 4. 6 E. 4. 11. 27 H. 8. 22. b.

2. So if upon a Diſtringas the Sheriff returns Petit Iſſues, ſo that the Parties do not appear upon a Teſtatum of Aſſets in other County, a Diſtringas ſhall iſſue for the Benefit of the King to have greater Iſſues, and for the ſpeedier Juſtice. Entries fo. 226. a. Diſtreſs 4. Tr. 30 H. 8. Rot. 102. P. 18. H. 8. Rot. 304.

(C) Upon the 25 E. 3. cap. 17. *Capias or Exigent.*

Detinue of a Box; the *Defendant came*

1. IN a Detinue of a Cheſt with Charters a Capias and Exigent lies by reaſon of the Cheſt. 29 E. 3. 19. b. Adjudged.

by Capias, and the *Plaintiff counted of a Box with Charters concerning Land*, and therefore the Defendant prayed to make Attorney; And becauſe now it appears by the Count, that it touches the Realty, therefore Capias does not lie, by the Opinion of all the Court; and therefore now he ſhall make Attorney. Br. Exigent, pl. 15. cites 7 H. 4. 2 ——— Note, per Mombrey, that *Ca. Sa. lies for Execution in Detinue of a Bag of Charters, becauſe the Bag is only a Chattel*, and Capias lies upon the Original thereof, and therefore Capias may be Execution; Quære inde. And from hence ſee, that where Capias is not the Proceſs upon the Original, that there Ca. Sa. is not the Execution, & ſic dixit Belk ibidem. Br. Exigent, pl. 8. cites 40 E. 3. 25. ——Br. Proceſs, pl. 18. cites S. C.

The Capias is not by this Statute, but *by the Common Law.*

2. 25 E. 3. *Stat'* 5. 17. *Proceſs ſhall be made in a Writ of Debt and Detinue of Chattels, and taking of Beaſts by Writ of Capias, and by Proceſs of Exigent by the Sheriff's Return, as is uſed in a Writ of Accompt.*

Per Manwood Ch. B. 2 Le. 88. pl. 112. in Caſe of Ognel v. Paſton.

3. If

3. If the *Diſſeiſin* be found *with Force and Arms*, Capias pro fine ſhall be awarded, and Exigent thereupon. Br. Proceſs, pl. 32. cites 7 H. 4. 39.

4. In Replevin *Witherman was awarded* for the Defendant againſt the Plaintiff; the *Sheriff returned, Quod Averia Elongata ſunt*; there Witherman was awarded for the Defendant of the Goods of the Plaintiff, and the *Sheriff returned Nihil*, by which 3 Capias's iſſued, and at the Pluries returned, Exigent iſſued; Quod Nota, that the Plaintiff may be *outlawed upon his own Suit*. Br. Proceſs, pl. 34. cites 11 H. 4. 10. Br Replevin, pl. 18. cites S. C.

5. *Juſticies to the Sheriff to hold Plea upon Obligation of* 1000 *Marks*, the Juſticies *was removed into Bank by Pone*, upon which the *Defendant was returned Nihil*; the Plaintiff prayed Capias; And per Martin and Cockain. the Capias does not lie, For the Statute which gives it *ſays, in Writ of Debt* Capias lies, which is *intended Original*, and this *Juſticies is not Original, but a Commiſſion to the Sheriff to hold Plea beyond* 40 *s.* And the Sheriff upon this cannot award Capias in the County, nor Ca. Sa. Br. Exigent, pl. 5. cites 3 H. 6. 54, 55.

6. In *Treſpaſs* the *Defendant appear'd and had Day by Dies datus* &c. and *at the Day made Default*, by which *iſſued Diſtringas*, and he is *returned Nihil*; there *ſhall iſſue* 3 *Capias's & Exigent*; Quod nota after Appearance. Br. Exigent, pl. 6. cites 19 H. 8. 1.

7. In Treſpaſs upon he Caſe the Plaintiff had proceeded againſt the Defendant in the old way by *Pone & Diſtreſs*, and the Defendant moved to ſtay the Proceedings, ſuggeſting the ſame to be contrary to the Method preſcribed by the late Act of Parliament to prevent vexatious Arreſts, 12 Geo. & 2 Geo. 2. And the Queſtion was, Whether by theſe Statutes the old Method of Proceeding be taken away, and another Method inſtituted, or not? It was urged for the Plaintiff, That *before the Statute of Marlbridge no Capias lay*, that the *ancient Courſe of Proceeding was by Original*, and where the Party was returned attach'd no Proceſs lay, but a Diſtringas, except in Treſpaſs Vi et Armis. In this Caſe the Party is returned attach'd upon the Original, and no Proceſs of Outlawry lies. The Act of Parliament 12 *Geo. preſcribes a Method in Caſes where the Cauſe of Action is under* 10*l. and the Plaintiff proceeds by way of Proceſs againſt the Perſon*; but here the Plaintiffs do not proceed by way of Proceſs againſt the Perſon, and after the Original returned as aforeſaid, no Proceſs againſt the Perſon can iſſue, and conſequently the Party cannot be ſerved with Proceſs. There is alſo an *Exception in the Statute* 12 *Geo. as to Peers and privileg'd Perſons*, who are to be proceeded againſt as by the Statute 12 W. 3. but that can relate only to Caſes where the Proceeding is by way of Proceſs againſt the Perſon, and not by *Method of Pone and Diſtreſs*, which is a dilatory Method in the Defendant's Favour, where Eſſoins may be caſt, and *remains as it was, not affected by any of theſe Statutes*. Per Cur. The *Statutes of Marlbridge and* 25 *Ed.* 3. *do not take away the ancient Method of Proceeding by Original and Diſtringas*; But where it is returned upon the Original, That the Defendant hath nothing whereby he can be attach'd, a Capias againſt the Perſon may be iſſued, and a Proceeding to Outlawry carried on. The Words of the Statute 12 *Geo. extends only to Proceedings by way of Proceſs againſt the Perſon, and ſeems to admit Plaintiffs may proceed otherwiſe, as before*; And it would be hard to ſay, This Clauſe hath repealed the Law by Implication. As to Proceedings againſt privileg'd Perſons; a new Method by Bill is preſcrib'd by the Statute of 12 W. 3. but the Law not alter'd. Let the Rule to ſhew Cauſe why the Proceedings ſhould not be ſtay'd be enlarged. Notes in C. B. 292. Trin. 10 Geo. 2. Bias and Wife and Goodfleſh v. Lyell.

(D) *What* Proceſs ſhall be *awarded.*

In falſe Impriſonment the Defendant juſtified by a Capias directed to him upon a Suit commenc'd againſt the Plaintiff in an inferior Court; the Plaintiff demurr'd becauſe it was not ſhewn that a Summons iſſued firſt, and inferior Courts can award no Capias but upon a Summons firſt return'd. Hale Ch. J. ſaid, That the ordinary Practice of thoſe Courts to grant a Capias without a Summons is a great Abuſe, ſo that the Party is driven to Bail in every trivial Action; and tho' upon a Writ of Error this Matter is not aſſignable, becauſe a Fault in Proceſs is aided by Appearance &c. yet falſe Impriſonment lies upon it, and the Officer cannot juſtify here as in Proceſs out of the Courts of Weſtminſter; And Judgment for the Plaintiff. Vent. 220. Trin. 24 Car. 2. B. R. Read v. Wilmot —— S. C. of Read v. Wilmot was cited by Powel J. in the Caſe of **Gwinne** v. **Pool** & al. who ſaid, That tho' he has as great Reſpect as any Man for the Opinion of Hale Ch. J. yet he cannot agree to this Judgment, which he ſaid was given upon the firſt Argument upon a Diſpleaſure conceiv'd againſt the Male Practices of inferior Courts in this irregular Way of Proceeding, but that it certainly is only a Proceſs Inverſo Ordine, and erroneous only; and that in the Caſe of **Ward** v. **Ellard**, Cro. J. 261. it was held to be Error, and that ſo is **Marget** and **Harvey**'s Caſe Palm. 449. and that no Cuſtom of any inferior Court will make this Proceſs good; but that *by the Cuſtom of London, which is confirm'd by Act of Parliament*, this Proceſs is held good in **Mackalley**'s Caſe 9 Rep. 68. But it there appears, That without this Cuſtom it would be only erroneous Proceſs; And ſays, He ſees no Reaſon why Officers of the ſuperior Courts ſhould be thought more knowing than thoſe of the inferior. Lutw. 1564, 1565. Mich. 4 W. & M.

1. A Capias **ſhall not be awarded** before a Summons, **but the firſt Proceſs ought to be a Summons.** P. 16 Ja. B. R. **between** *Banks* **and** *Pembleton.* **Adjudg'd.**

2. Alſo **a Capias cannot be firſt awarded before any Summons** by Cuſtom of any Court, **for it is contrary to the Law.** P. 16 Ja. B. R. **between** *Banks* **and** *Pembleton.* **Adjudg'd.**

(E) *Who may award* the Proceſs.

1. **If a Man be** outlaw'd before the Juſtices of the Peace in their Seſſions, **the Juſtices of the Peace may award a** Capias Utlagatum **thereupon**; **for** the Court which can outlaw **a Man** may alſo award Proceſs **of Outlawry.** M. 10 Ja. B. **Per Curiam.**

2. **The** ſame **Law of** Juſtices of Goal-Delivery. **Mich.** 10 Ja. B. **Per Curiam.**

(F) Execution.

Bailiff ſtood at the Street-Door, and ſent his Servant up 3 Pair of Stairs in a diſguis'd Habit with the Warrant, who laid Hands on W. R. and told him, That he arreſted him. Holt Ch. J. doubted if this was a good *Arreſt*, being done *by the Bailiff's Follower* or Servant, and *not in the Preſence of the Bailiff himſelf*; but ſaid, That the Plaintiff muſt prove his Cauſe of Action againſt W. R. and muſt prove the Writ and Warrant by producing ſworn Copies of them. And he muſt prove the Manner of the Arreſt, that it may appear to the Court to be a lawful Arreſt; and in Point of Damages, he muſt likewiſe prove the Loſs of his Debt, viz. That W. R. became Inſolvent, or could not be retaken. 3 Salk. 311. Anon.—— 6 Mod. 211. Trin.

1. **If a** Special Bailiff, by **Force of** a Warrant upon Capias in Proceſs, enters **into** the Houſe of J. S. the Door being open, and there takes J. D. **againſt whom the Writ is, the Proceſs is well ſerved as to J. D. and all Strangers; And if any Stranger reſcues him, he at whoſe Suit he is arreſted ſhall have his Action againſt the Stranger.** Tr. 16 Ja. B. R. **between** *Hodges* **and** *Markes.* **Adjudged upon Demurrer.**

Trin. 3 Ann. B. R. S. C. By Name of Wilſon v. Gary. ——— If a Bailiff, having a Warrant from a Sheriff on a Capias, *ſends another* in his Room to arreſt the Perſon, ſuch Arreſt *is illegal*. Per Holt Ch. J. 12 Mod. 73. Trin. 7 W. & M. Anon.

(G) *At what Time* the Proceſs may be *executed*.

Fol. 278.

1. If a Latitat returnable Die Lunæ proximo Poſt Craſtinum Sanctæ Trinitatis, which was this Year the 10th of July, comes to the Sheriff to arreſt J. S. the Sheriff may arreſt him the ſaid 10th Day of July. Tr. 3 Ja. B. R. between *May* and *Hoper*, by Fenner and Yelverton agreed.

The utmoſt Length of Time the Law allows for executing a Writ is the *Day on which 'tis returnable*, and 'tis not executable that Day any longer than the *Court ſits*. 1 Salk. 322. pl. 8. Paſch. 3 Annæ. B. R. in the Caſe of Perkins v. Wollaſton. ——— 6 Mod. 130. S. C.

2. So a Capias in Proceſs may be executed the Day of the Return thereof.

3. So a Capias ad Satisfaciendum may be executed the Day of the Return thereof.

4. If a Writ of Enquiry of Damages be returnable Octabis Michaelis, the Sheriff may take the Inqueſt and inquire of the Damages the Day of the Return, and afterwards return it the ſame Day, and this Writ is well executed. Tr. 38 El. B. R. between * *Gawen* and *Ludlow*. Adjudg'd. And there is cited to be adjudg'd accordingly in * *Bugber*'s Caſe, which was Mich. 11 Car. B. R. between *Stainsby* and *Waterman* in Replevin, the Writ to inquire for Damages for detaining of Rent executed the ſame Day of the Return, that is to ſay, the Eſſoign Day, and Per Curiam good. But new Writ was awarded, becauſe the Damages were exceſſive.

* Cro E. 468. S. C and cites the Caſe of Buckleer v. the Queen. — S. P. Adjudged. And S. C. cited Mo. 712. pl. 998. Mich. 41 & 42 Eliz. in the Caſe of Woolley v. Mooſley ——— But if the Inqueſt had been taken the 2d Day of Craſt. Trin. and before the 4th Day of Craſt. Trin. it had not been good. Cro. E. 180. Paſch. 32 Eliz. Bugberd's Caſe.

5. If upon a Writ to inquire of Damages, the Inqueſt be impannell'd the Eſſoin-Day, and the Jury then hear their Evidence, but give their Verdict 2 or 3 Days after, yet this is well executed. Mich. 11 Car. B. R. in the ſaid Caſe of *Stainesby* and *Waterman*, ſaid by Jones and Barkley, That this was adjudg'd in * *Bugber*'s Caſe.

* S. C & P. cited to have been adjudg'd good; for the Jury being charged at the firſt Day, tho' they gave not their Verdict 'till 2 Days after, it ſhall not prejudice the Party; but the Verdict being given, ſhall relate to the firſt Day of the Return, and ſhall be ſaid to be executed upon the firſt Day, to which it ſhall have Relation; And for that Reaſon, Popham Ch. J. who before differ'd, agreed in the principal Caſe, That the Writ was well executed. Cro E. 468. (bis) Paſch. 38 Eliz. B. R. pl. 26. Gawen v. Ludlow.

6. If a Niſi Prius be taken after the 1ſt Day of the Return, and before the 4th, it is not good; for the Juſtices have no Power to take it after the Day of the Return. 33 H. 6. 45. b. Adjudged. Tr. 38 El. B. R. Agreed.

7. But if the Niſi Prius be taken the Day of the Return, or before, and the Jury do not give their Verdict 'till 2 or 3 Days after, becauſe they cannot agree, yet it is good enough; becauſe otherwiſe the Jury may prejudice the Parties by their Diſagreement. Tr. 38 El. B. R. Per Popham.

8. So it is of a Writ of Inquiry of Damages taken in ſuch Manner. Tr. 38 El. B. R. Per Popham. And there ſaid, That it was ſo adjudg'd in *Bugber*'s Caſe.

9. If

S. C. cited Per Cur. Cro. E. 180. pl. 15. Paſch. 32 Eliz. B. R. in Bugbeard's Caſe, and took a Difference between the executing a Writ of Inquiry of Damages and the Caſe of an Exigent, and of the *Venire facias ad Diem Octabis*, there the Day is excluded, but not in Writ of Enquiry.

9. If a Man be outlawed after the firſt Day of the Return of the Writ it is erroneous 33 H. 6. 46. ſaid to be oftentimes ſo adjudged by the Advice of all the Juſtices.

S. P. for this is one and the ſame Day in Effect, and when the firſt Day is paſt, his Authority is expired Br. Proceſs, pl. 169. cites S. C. ——In Treſpaſs for Battery and Impriſonment, Defendant juſtified by Execution of a Writ, but upon the Plea it appeared to be executed *after the Day of the Return, but before the Quarto Die poſt.* The Execution was adjudged illegal, and Judgment for the Plaintiff. Lev. 143. Mich 16 Car. 2. B. R. Ellis v. Jackſon.——Sid. 229. S. C. accordingly.

10. The Sheriff upon a Capias in Proceſs cannot arreſt the Party after the Day of the Return, and before the 4th Day. 33 H. 6. 45. b.

11. If a Man *vouches two as Heirs*, the *one of full Age*, the *other within Age*, and prays that the Parol demur, and the Demandant ſays that he is of full Age, and prays Venire facias to be viewed, Proceſs ſhall iſſue againſt him of full Age; Per Markham; but Newton e contra; and that *no Proceſs ſhall iſſue till the other be adjudged to be of full Age.* Br. Proceſs, pl. 61. cites 19 H. 6. 5.

12. A *Writ by the Roll* was *awarded returnable on Wedneſday*, but was *made returnable on the Thurſday*, and *executed on the Thurſday.* The Writ was ordered to be amended according to the Roll, and the Execution upon the Thurſday void. Cited by Windham J. Lev. 143. Mich. 16 Car. 2. B. R. in Caſe of Ellis v. Jackſon.

13. In falſe Impriſonment Defendant juſtified by Arreſt on a *Latitat.* Plaintiff replied, that the Writ *was taken out after the Arreſt.* The Defendant demurred. Per Cur. The Writ being antedated is no Juſtification and Judgment for the Plaintiff. 3 Keb. 213. Mich. 25 Car. 2. B. R. Chancy v. Rutter.

(H) Who may execute it.

1. STatute of Lincoln, 11 E. 2. in Magna Charta, fol. 109. b. and that the Executions of Writs which ſhall come to the Sheriffs be made by the Hundredors known and ſworn in full County, and not by others, if it be not in great Default, or notorious Diſturbance of Hundredors, and then let them be made by others covenable and ſworn, ſo that the People might know who ſhall ſerve ſuch Executions, ſaving all Returns of Writs to thoſe who have and ought to have them.

2. Treſpaſs of *Battery in Middleſex*, and the *Plaintiff counted in the Palace of Weſtminſter where the Sheriff has no Juriſdiction*; And per Marten the Count ſhall abate; For it *is Infra*, and *not De*; for the *Palace is no Part of the County*, for *Proceſs ſhall iſſue* immediately from the Court *to the Warden of the Palace*, and *not to the Sheriff*, and therefore he may direct Precept to the Warden, as in Caſe of a Liberty within the County. Br. Count, pl. 77. cites 2 H. 6. 7.

3. *Writ ſhall not be ſerved part by the Sheriff*, and part by the Bailiff of the Franchiſe by Parcels; Quod Nota. Br. Proceſs, pl. 33. cites 8 H. 4. 17.

(I) *What* ſhall be ſaid *a good Arreſt* in Law.

Fol. 279.

See Arreſt.

1. IF three Writs of Capias in Proceſs at the Suit of J. S. againſt J. D be directed to the Sheriff, and the Sheriff makes three ſpecial Warrants to one ſpecial Bailiff, and he comes to J. D. and arreſts him generally, without ſhewing in which Action, nor is it demanded of him; but immediately upon the Arreſt a Stranger reſcues him, Action upon the Caſe lies againſt the Stranger for all three Reſcues; For this was an Arreſt in Law upon all. Tr. 16 Ja. B. R. Adjudg'd between Hodges and Marks.

The Arreſt, without having the Warrant in his Hand, and having all the Warrants about him was well enough, though he did not ſhew by which of the Warrants he arreſted him; for he, being under the Bailiff's Arreſt, is in Cuſtody there for all Cauſes for which the Sheriff had made his Warrants againſt him, though the Sheriff or Bailiff do not mention any ſpecially. Cro. J. 486. S. C.

2. So if the Writs and Warrants were at the Suit of three ſeveral Perſons, and the Bailiff arreſts him generally as before, this is a good Arreſt for all, and all ſhall have Actions for the Reſcue. Tr. 16 Ja. B. R. between *Hodges and Marks* per Curiam.

Cro. J. 485. S. C.

3. If a Warrant be directed by the Sheriffs of London to certain Serjeants there to take A. B. a Counteſs upon a Capias ad Satisfaciendum, and the Serjeants, for Fear of a Reſcue, procure the Party Plaintiff to enter an Action of 1000 l. againſt the ſame A. B. by the Cuſtom of London, whereupon they would arreſt her, and carry her to the Compter, and there charge her in Execution, And after the Serjeants come to A. B. and ſay that they arreſt her, without ſaying more; This General Arreſt cannot be by force of the Writ of Execution; For when the Sheriff or other Perſon by his Authority makes Arreſt of the Perſon of another, [he] ought upon the Arreſt to ſhew at whoſe Suit, out of what Court, for what Cauſe he does it, and when the Proceſs is returnable, to the Intent, if it be for any Execution, that he ſhall pay it and free his Body, or agree with the Party, or put in Bail according to the Law, and to know when he ſhall appear. Co. 6. *Counteſs of Rutland.* 54. Reſolved.

When a Bailiff makes an Arreſt by Warrant, he *ought to ſhew the Cauſe* of the Arreſt, as to ſay, that he arreſts him on an Execution, and for how much Money; And if it be upon Appearance, he ſhall tell the Court, and the Day of Appearance compriſed in the Writ, otherwiſe the Arreſt is not good. And yet a *known Officer* ſhall not be compelled to *ſhew his Warrant* as a ſpecial Bailiff ſhall, but though he has a Warrant and will not ſhew it, yet he ſhall declare to the Party the Cauſe of the Arreſt. Mo. 767. pl. 1063. Mich. 3 Jac. in the Star-Chamber. S. C.

If Proceſs be delivered to the *Sheriff*, and he takes the Party without ſaying any thing, it is good; for otherwiſe the Sheriff ſhall be a Treſpaſſor, which the Law does not intend, and the Sheriff has a lawful Authority ſo to do; and ſo it is, though the Sheriff *had not the Proceſs about him* at the time of the Arreſt. Noy. 55. Beale v. Taylor.

4. Upon a Capias in Proceſs at the Suit of J. S. if a Special Bailiff by force of a Warrant to him directed, arreſts the Party, and does not ſay at whoſe Suit, nor is it demanded of him at whoſe Suit it is, but immediately upon the Arreſt a Stranger reſcues him, this is a good Arreſt, and an Action lies againſt the Stranger; For he had not time to ſhew at whoſe Suit it was, nor is he bound to ſhew at whoſe Suit it is, before that he has peaceably ſubmitted to the Arreſt. Tr. 16 Ja. B. R. between *Hodges and Markes.* Adjudged upon Demurrer.

And though the Warrant was in his Pocket, and he only ſaid, Here I do arreſt you by Virtue of a Warrant which I have, but did not ſhew him the Warrant, nor had it in his Hand, yet it was reſolved, that this was a good and legal Arreſt, and that he needed not to ſhew the Warrant till the other obeyed and demanded it. Cro. J. 485, 486. Trin. 16 Jac. B. R. S. C.

5. A Man who is *Sheriff of London and Middleſex*, or of *Eſſex and Hertford*, cannot *take a Man in the one County by Capias directed to him in the other County*; but a Man taken in Middleſex ſhall be brought to Newgate in London; for this is the Gaol of both Counties. Br. Proceſs, pl. 168. cites 16 E. 4. 5, 6.

6. *A. comes to the Sheriff, and tells him he has a Writ againſt B.* who is *then preſent*, and on this the Sheriff ſays, I will take his Word for his Appearance, this cannot be taken for an Arreſt. Arg. Vent. 118. Paſch. 23 Car. 2. B. R. in Caſe of Methwin v. Hundred of Thiſtleworth.

7 Mod. 8. S.P. Anon.—S. P. 2 Roll. R. 138. Sir William Fiſh's Caſe.

7. A Bailiff *caught one by the Hand at a Window* whom he had a Warrant to arreſt; This was ſuch a Taking, that the Bailiff might juſtify breaking open the Houſe to carry him away. Vent. 306. Hill. 28 & 29 Car. 2. Anon.

For more of Proceſs in General, See **Arreſt, Contempt, Execution** and other proper Titles.

Pro Confeſſo.

(A) In what Caſes a Bill ſhall be taken Pro Confeſſo.

S.P. Toth. 100. cites 10 Jac. Earl of Hertford v. Gerrard.

1. BECAUSE the Defendant *ſtood out all Proceſs of Contempt* for not anſwering, the Bill was taken Pro Confeſſo. Toth. 100. cites 36 Eliz. Wildgoſs v. Ragland.—— And 11 Jac. Denton Mill v. Brown.—— Ibid. cites 13 Jac. Earl of Oxon v. Gouch.

The *Defendant ſtood in Contempt* for not anſwering the Plaintiff's Bill, and thereupon a Sequeſtration was granted, and it was likewiſe *decreed, That* the *Bill ſhould be taken Pro Confeſſo, unleſs* the *Defendant ſhew Cauſe within a certain Time* limited for that Purpoſe by the Court. But this muſt be underſtood (as the Caſe then was) where the Defendant had appear'd; for if he did not appear at all, but ſtood out all Contempts to a Serjeant at Arms, no Decree can be had againſt him, or the Bill taken Pro Confeſſo; for that muſt be after an Appearance, and when he ſtands in Contempt for want of an Anſwer. N. Ch. R. 1, 2. Paſch. 1 Car. Okeham v. Hall.

Where the Defendant has *not appear'd*, Chancery can't decree the Bill Pro Confeſſo, but ordered a *Sequeſtration* againſt his Real and Perſonal Eſtate 'till he clear'd the Contempt. 2 Ch. R. 284. 35 Car. 2. Nodes v. Battle.

The Courſe of the Court now is to take a Bill Pro Confeſſo after the Party has once *appear'd*, and ſtands out in Contempt 'till the Plaintiff has got to the End of the Line, and has run thro' all the Proceſs of the Court againſt him; yet formerly this Court did not do it even in that Caſe without putting the Plaintiff to prove the Subſtance of his Bill. Arg. Vern. 224. Hill. 1685. in the Caſe of Johnſon v. Deſmineere.

2. *Two Defendants, the one* having *anſwered, the other refuſes*, he ſhall be bound by the other's Anſwer, if the Cauſe paſs againſt them. Toth. 74. cites 7 Jac. Matthew v. Matthew.

3. Defendant being a *Priſoner in the King's Bench*, refus'd to anſwer. The Bill can't be taken Pro Confeſſo, unleſs he was *in the Priſon of this Court*; whereupon he was removed by Habeas Corpus into the *Fleet*, and having a Day given him to anſwer, and he ſtill refuſing, the Bill was taken Pro Confeſſo, and he was ordered to be kept cloſe Priſoner. N. Ch. R. 50. 1653. Thomas v. Jones.

4. Where

4. Where the Defendants were not brought in upon any Proceſs of Contempt, but they appear'd to the Subpœna to anſwer, and *crav'd a further Day*, and had it, and ſtill *ſtood out all Contempts*, and could not be taken, the Bill was taken Pro Confeſſo, and a Decree upon it decreed to be well grounded, and a Bill of *Review* ordered to be diſmiſs'd. N. Ch. R. 64. 14 Car. 2. Denny v. Filmore.

5. In a Suit for *Tithes* the Defendant was in *Contempt* for not anſwering, and was brought by ſeveral Orders to the Bar; and being a *Quaker* refuſed to anſwer on Oath, but pray'd to anſwer without Oath. Finch C. admoniſhed him of the Peril, viz. That the Bill muſt be taken for true *entirely as 'tis laid*, if he anſwer'd not; and he ſaying as before, the Lord Chancellor pronounc'd the Decree, tho' Sir J. Churchill, as Amicus Curiæ, ſaid, That this Cauſe for Tithes, eſpecially ſmall Tithes, was not proper for this Court, and had not been uſed; but decreed for the Plaintiff, and referr'd the Valuation to the Maſter. 2 Chan. Caſes 237. Mich. 29 Car. 2. Anon.

6. *Defendant* having *appear'd*, and *afterwards ſtood in Contempt 'till Sequeſtration* was return'd, It was inſiſted, That the Bill ought to be taken Pro Confeſſo; but the Lord Keeper ſaid, He would conſider of it 'till the next Term. And it being *alleg'd, That Baron and Feme were Defendants, and that* it was *the Wife only* who had *appear'd*, and that without the Husband's Privity, Lord Keeper refer'd it to a Maſter to examine the Fact, and ſaid, If it ſhould fall out to be ſo, he could not decree againſt the Husband, but they muſt proceed and lay on the Sequeſtration to bring him in. Vern. 247. Trin. 1684. Gibſon v. Scevengton.

7. A Defendant refuſing to anſwer, and *ſtanding out all Contempts 'till* an Order was made for *a Sequeſtration*; it was pray'd by the Plaintiff's Counſel, That the Bill might be taken Pro Confeſſo. To which it was objected by the Counſel on the other Side, That this could not be done, becauſe the Sequeſtration was *neither under Seal nor executed*, and alſo becauſe the Plaintiff did *not produce the Original* itſelf, but only a Copy of it. Lord Chancellor Parker held the laſt Objection certainly a good one; but as for the other, there ſeem'd to him to be no Reaſon for it; for the Putting the Seal to the Sequeſtration, and actually Executing it, ſeems to be then only neceſſary when the Plaintiff is not ripe for a Decree upon his own Bill, but wants ſome Diſcovery from the Defendant's Anſwer, upon which the Decree may be founded; and therefore the actual Executing a Sequeſtration to extort an Anſwer, of which the Plaintiff has no Occaſion, ſeem'd to him very unneceſſary. 10 Mod. 431. Paſch. 5 Geo. Anon.

8. 5 *Geo.* 2. *cap.* 25. *S.* 1. Enacts, That *if in any Suit in Equity any Defendant, againſt whom Proceſs ſhall iſſue, ſhall not cauſe his Appearance to be enter'd according to the Rules of the Court, in Caſe ſuch Proceſs had been ſerved, and Affidavit ſhall be made, That ſuch Defendant is beyond the Seas, or that, upon Inquiry at his uſual Place of Abode, he could not be found, ſo as to be ſerv'd, and that there is juſt Ground to believe that ſuch Defendant is gone out of the Realm, or abſconds to avoid being ſerv'd; the Court may make an Order, appointing ſuch Defendant to appear at a Day therein to be named, and a Copy of ſuch Order ſhall, within* 14 *Days, be inſerted in the London Gazette, and publiſhed on ſome Lord's Day, after Divine Service, in the Pariſh Church where ſuch Defendant made his uſual Abode within* 30 *Days next before his Abſenting; and a Copy of ſuch Order ſhall be poſted up, viz. A Copy of ſuch Order made in Chancery, Exchequer, or Dutchy-Chamber, ſhall be poſted up at the Royal Exchange; and a Copy of every ſuch Order made in any of the Courts of Equity of the Counties Palatine, or of the Great Seſſions in Wales, ſhall be poſted up in ſome Market-Town within the Juriſdiction of the Court, neareſt to the Place where ſuch Defendant made his uſual Abode, ſuch Place of Abode being alſo within the Juriſdiction of the Court; And if the Defendant do not appear within ſuch Time as the Court ſhall appoint, then, on Proof made of ſuch Publication of ſuch Order as aforeſaid, the Court may order*

Mr. Serjeant Barnardiſton in his Reports of Caſes in Chancery 401 to 404. tells us, That the Opinion of the Court was, that it is not ſufficient upon this Statute to make *Affidavit, That the Party making it was inform'd, and believes that the Defendants withdrew* themſelves into Ireland, in order to avoid being

ſerv'd with the Proceſs of this Court. But it muſt be likewiſe ſworn by whom the Deponent receiv'd ſuch Information, and cites Hill. 1740. Burton v. Maloon.

order the Plaintiff's Bill to be taken Pro Confeſſo, and make ſuch Decree thereupon as ſhall be juſt; and the Court may order ſuch Plaintiff to be paid his Demands out of the Eſtate ſequeſtred according to the Decree, ſuch Plaintiff giving Security to abide ſuch Order touching the Reſtitution of ſuch Eſtate, as the Court ſhall make upon the Defendant's Appearance. But in caſe ſuch Plaintiff ſhall refuſe to give Security, then the Court ſhall Order the Effects ſequeſtred to remain under the Direction of the Court until the Appearance of the Defendant to defend ſuch Suit.

Provided, That this Act ſhall not affect Perſons beyond the Seas, unleſs Affidavit be made of their being in England *within 2 Years before the* Subpœna.

Nor extend to Courts having a limited Juriſdiction, unleſs Oath be made of Perſonal Reſidence in ſuch Juriſdiction one Year before the Subpœna.

9. The Defendant appeared and ſtood out to a Sequeſtration, and afterwards, on getting Time, put in an Anſwer, which was reported inſufficient in near 20 Exceptions, and was ſerved with Subpœna to make a better Anſwer. The Defendant put in another Anſwer alike inſufficient. It was inſiſted for the Defendant, That the *Practice of taking Bills Pro Confeſſo is not of long ſtanding*, the ancient Way being to put the Plaintiff to make Proof of the Subſtance of the Bill; and that, in this Caſe, taking all the Bill Pro Confeſſo, where Part had been ſufficiently anſwer'd, ſeem'd very ſtrange. But it was anſwer'd, That an inſufficient Anſwer is as No Anſwer, and therefore the whole to be taken Pro Confeſſo; And the Maſter of the Rolls decreed for the Plaintiff. But Lord Chancellor King, on an Appeal, ſaid, He would conſider how Matters ſtood at the Time of ſuch Decree, and that it was ſufficient that there then was an Anſwer, and which the Plaintiff had admitted to be ſo by ſuing Proceſs for a better; and that to ſay the Defendant confeſs'd the whole Bill true, when, by the Maſter's Report, (which was a Record of the ſame Court) that he had anſwered the greateſt Part; and when the Plaintiff himſelf had taken the firſt Anſwer to be an Anſwer in Part by ſerving the Defendant with Proceſs to put in a better, is againſt Common Senſe; and revers'd the former Decree. 2 Williams's Rep. 556. Mich. 1729. Hawkins v. Crook.

10. If a *Defendant* obſtinately *inſiſts upon his Demurrer*, and refuſes to anſwer *where* the Court is of Opinion, That *ſufficient Matter is alleg'd* in the Bill to oblige him to anſwer, and for the Court to proceed upon, the Court will decree the Matter of the Plaintiff's Bill; For by the Demurrer are confeſs'd all Matters of Fact that are alleg'd. Curſ. Canc. 209

For more of **Pro Confeſſo** in General, See **Contempt**, **Sequeſtration**, and other Proper Titles.

Procurations.

1. 34 & 35 *H.* 8. 19. ENACTS, That *Penſions, Portions, Corodies, Indemnities, Synodies, Proxies, and all other Profits due out of Religious Lands diſſolved, ſhall be paid to Biſhops &c. by the Occupiers of the ſame Lands, if ſuch Eccleſiaſtical Perſons were ſeiſed thereof within* 10 *Years before their Diſſolution. And if upon Suits in the Eccleſiaſtical Court for the ſame, where the Payment thereof is wilfully deny'd, the Defendant be convicted,*

convicted, the Plaintiff ſhall recover the Value thereof in Damages, together with his Coſts of Suit. The like he ſhall recover at the Common Law, when the ſame is thereby determinable.

Provided, If the King hath demiſed any of the ſaid Lands with a Covenant to diſcharge the Tenant of ſuch Charge, that then the Party claiming the ſame ſhall ſue for them in the Court of Augmentations, and not elſewhere.

In a *Prohibition* to ſtay an Excommunication for not paying Procurations and Proxies; the *Suggeſtion* was, That by the Statute all ſuch Archbiſhops &c. as have a Right to any Proxies &c. againſt thoſe to whom the King ſhould grant any Lands charged therewith, with a Clauſe in the Grant, That the ſaid Lands ſhould be diſcharged, ſhould ſue for the ſame in the Court of Augmentations, now annex'd to the Exchequer, and not elſewhere; that in the preſent Caſe the *Lands were granted by Patent diſcharg'd of Proxies* &c. Sed non Allocatur, becauſe this Statute *extends only where particular Eſtates are granted over*, as appears by the Words, Any Sale &c. for Life, Lives or Years, and not where the Fee is granted, as it was in this Caſe. Hard. 388. Mich. 16 Car. 2. in Scacc. the King v. Lake.

2. An Archdeacon brought his *Bill in the Exchequer* againſt the Defendants, being Parſons and Vicars in London, *for* certain Sums of *Money due* for their Proxies *by Preſcription*. The Defendants demurr'd, for that the Thing in demand was merely of Eccleſiaſtical Cognizance; and if the Title by Preſcription alter'd the Caſe, then the Plaintiff ought to have his Remedy at Law, and not in Equity. But of this the Court doubted, Et Adjornatur. The Chief Baron cited Lindw. That there are 3 *Sorts* of Proxies, Ratione *Viſitationis*, *Conſuetudinis*, and *Pacti*; that the 2 laſt were recoverable at Law, but becauſe in this preſent Caſe the Matter was doubtful, the Defendants were ordered to anſwer, and this Matter ſhould be ſaved to them at the Hearing. Hard. 180. Paſch. 13 Car. 2. in the Exchequer. Dr. Parker v. Seabrook & al.

3. *Libel* againſt K. for Procurations due to him as Archdeacon of York *ſet forth, That for* 10, 20 *&c. Years* there *hath been* due and *paid* 6 *s. yearly* by the ſaid K. and his Predeceſſors, Parſons of D. But K. ſuggeſted for a Prohibition, That the ſaid Duty hath not been payable, and *denied the Preſcription*, and that the Eccleſiaſtical Court cannot try Preſcriptions. Per Curiam, A Conſultation is granted Quoad Procurations demanded generally; But if the Plaintiff denied the Quantum, then a Prohibition. Raym. 360. Paſch. 32 Car. 2. B. R. Kirton v. Guilder.

2 Show. 97. S. C. by the Name of Girton v. Gilder, but Adjornatur. But there Scroggs Ch. J. ſaid, That if the *Difference* be *about the Quantum*, then they ought to have ſaid in the Suggeſtion, That ſo much is due, and no more; But here the whole is denied. But the whole Court agreed, That a Suggeſtion cannot be amended after a Prohibition is gone, nor in this Prohibition.

4. Adjudg'd, That * Procurations *are an Eccleſiaſtical Duty*, and therefore properly ſuable for in the Spiritual Court. 2dly, Where it was *claimed by and from an Eccleſiaſtical Perſon*, it is ſo much the ſtronger. 3dly, Tho' there was an *Impropriation* in the Caſe, ſtill there muſt be a Curate to take Care of the Souls of the Pariſh; and Curates as well as other Perſons muſt ſtand in need of Biſhops or Archdeacons Inſtructions and Viſitations. Conſequently, 4thly, That the † Ordinary or Archdeacon ought to be *allowed* for his Procuration *what had been uſually paid for it*, which in the Principal Caſe appeared to be 6 s. 8 d. 5thly, That where a Thing is *claimed by Cuſtom in the Spiritual Court*, it muſt be *intended according to their Conſtruction* of a Cuſtom, and by their Law 40 Years make a Cuſtom or Preſcription. 6thly, That the *Payment* of 6 s. 8 d. *for* 70 *or* 80 *Years is* an *Evidence of an Immemorial Payment*. But if it could not be ſtrictly Immemorial, as taking the *Archdeaconry* to have been *founded in E. 6th's Time*, yet ſince that Period it might become due by Endowment, which might in this Diſtance of Time have been loſt. Williams's Rep. 657, 663. Mich. 1720. B. R. Saunderſon v. Clagget.

* Procurations, Synodals and Pentecoſtals being denied when due, are *recoverable in the Spiritual Court*, being Profits of a mere Spiritual Nature. 2 Gibſ. Cod. 1017.

† Procuration is due to the Perſon viſiting, De Jure Communi. The Term is thus explain'd by the Canoniſts. *Hoc Munus ideo Procuratio Vocatur quia Eccleſiæ Epiſcopum procurant*, i. e. Curant, alunt, ac tuentur. 2 Gibſ. Cod 1016 —— Donatives & Free Chapels pay no Procurations to any Eccleſiaſtical Ordinary, becauſe they are not viſitable by any. Ibid.

5. *Churches newly erected* ſhall be rated to Procurations according to the Proportion paid by the neigbouring Churches. 2 Gibſ. Cod. 1016.

For more of **Procurations** in General, See Dav. Rep. The Caſe of Proxies.—Godolph. Rep. cap. 9.———Gibſ. Cod. &c.

Profeſſion.

(A.) Profeſſion. *Dereignment.*

Fol. 280.

He could not be diſcharg'd of his Profeſſion

1. A Monk **under Obedience may be diſcharged of the Obedience** by the Archbiſhop, with Licence of his Sovereign. 3 H. 6. 24. by any but the *Pope*. Br. Nonability, pl. 2. cites S. C.

2. **A Man profeſs'd cannot be made** able for Things Temporal, **as to purchaſe Land, or to have Advantage of an Obligation,** by any except the Head of the Church, not by the Archbiſhop. 3 H. 6. 24.

Br. Nonability, pl. 2. cites S. C.

3. But **the Ordinary may make him able to take Advantage of** Things Spiritual **without the Head of the Church, as** to be Vicar or Parſon; **for this is not contrary to the Profeſſion, which is Spiritual.** 3 H. 6. 24. b.

4. *Mortdanceſtor*; becauſe his *Mother had taken* upon her the *Habit of Religion*. The Tenant ſaid that *before* the *Entry* into Religion, the Mother *eſpous'd W. N.* who is *yet* in full Life; for if he be *alive*, ſhe may be Deraign'd. Contra if he died after. Br Deraignment, pl. 9. cites 5 E. 4. 3.

(B.) *What* will be *good Cauſe* of Dereignment.

1. **IF a Man marries a** Wife, **and ſhe** before Carnal Conuſance enters into Religion, **yet the Marriage is not good Cauſe of Dereignment.** 18 H. 6. 83.

2. **Otherwiſe it is if ſhe enters into Religion** after Carnal Conuſance; **for then by this the Marriage is compleat.** 18 H. 6. 33.

(C.) Profeſſion. *At what Time a Man ſhall be ſaid* a Dead Perſon, and *Profeſs'd.*

1. **IF the** Freres put my Son, **being** an Infant, into the Habit without my Aſſent **before his full Age, he may come back to me with my Aſſent, or I may retake him from them; for he is not profeſs'd by the Habit.** 11 H. 4. 31. b.

4. So

2. So I may retake him after his full Age. 11 H. 4. 31. b. before he is profeſs'd.

3. If a Man enters into Religion, and is under Obedience, yet he is not a dead Perſon before Profeſſion. 3 H. 6. 24.

4. For Land may deſcend to a Man after Entry into Religion before Profeſſion, and may have Action for it as Heir. 3 H. 6. 24. Br. Nonability, pl. 2. S. C.—See Sir Laurence Anderton's Caſe.

For more of Profeſſion in General See Faits, (C) Grants, (C) pl. 1. Trial, (A) pl. 3. (O) pl. 12. 13. 14. and other proper Titles.

Profit Apprender.

1. PRofits apprender are *ſaved by the* Third Saving of the *Statute of Uſes.* 2 And. 26. pl. 52. in the Caſe of Lord Cromwel v. Andrews.

2. If I grant 10 *Load of Eſtovers* and Hay, or ſuch like, to be *taken annually*, or *Common for* 10 *Beaſts annually*, to be taken in ſuch a Place for Term of Life or Years, or otherwiſe, and he does not take any Thing of it for 3 or 4 Years there, in the 5th Year *he ſhall not take* 40 *Load*, nor can he put 40 Beaſts in *in the 5th Year*; for then peradventure the Grantor cannot take any Thing himſelf this Year; for it is not like to a Rent-charge. By the Opinion of the Court. Br. Parnor de Profits &c. pl. 2. cites 27 H. 6. 10.

3. Præcipe quod reddat does not lie *of Common*, but Quod permittat *and* the like of *other Profits apprender*, which lie in Prender and not in Render; for *at the Common Law no Action lay* of Profit Apprender, but the *Quod permittat*. Br. Precipe, pl. 13. cites 4 E. 4. 1.

4. A. as Tenant of a Manor has Right by Preſcription *to take Clay &c.* yet he can't take that which another has dug. The ſame of *Eſtovers*. Mo. 411. pl. 561. Trin. 37 Eliz. Stile v. Butts.

5. If the Lord had reſerv'd *Decimam partem* of the Corn &c. he ſhall have Aſſiſe of it, as of Profit apprender. Mo. 531. pl. 699. cites 44 E. 35. Cro. E. 599. pl. 5. Hill. 40 Eliz. ſays, That he may have Decimam *Garbam*, but not Decimam *Garbarum*.

6. Such Manner of Profits (though they are Appendant to a Frank-tenement) *cannot be divided*; For if ſuch Heritage deſcends to Parceners, one alone ſhall have the intire Profits, and the other *Parcener* ſhall have an Allowance; alſo Feme ſhall have for her *Dower* but an *Allowance*. Finch. 36. b. And if aſſigned to ſeveral, muſt be taken jointly; As if the Grant be to *dig Turf to make Allom &c.* the Aſſignees muſt work together, with the ſame Stock and Workmen belonging to both. Godb. 18. pl. 24. Paſch. 25 Eliz. C. B. the Lord Mountjoy's Caſe.

7. *Libertas Falcandi is* a Profit Apprender, but a Man is not thereby Tenant or Occupier, nor can preſcribe to be diſcharged of Tithes as ſuch. 2 Bulſ. 249. Suckerman & Coates v. Warner.

8. Licence to take a Profit in Alieno ſolo, need not be *by Deed*, where it is only *Unica Vice*, there paſſing no Eſtate in it. Vent. 25. Paſch 21 Car. 2 B. R. Rumſey v. Rawſon. But Profits in Appender *In alieno ſolo*, and which are not of Neceſſity, will not paſs without a Deed. Cro. J. 190. pl. 13 Mich. 5 Jac. B. R. Bewdley v. Brook.

For more of Profit Apprender in General, ſee Common, and other proper Titles.

Prohi-

* Prohibition.

*Prohibition *iſſues out of* the Chancery, B. R. or C. B. into the Spiritual Court, Admiralty, Court of Chivalry &c. *to forbid a Judge* &c. *to proceed in a Cauſe, that belongs to the Common Law Courts, or* that belongs *not to their Juriſdiction, though the Courts at Law can give no Remedy,* or it may forbid a Judge of any Temporal Court, to proceed in a Cauſe depending before him, upon Suggeſtion that the Cognizance of the Cauſe does not belong to him. Wood's Inſt. 570.

(A) The *Antiquity* of Prohibitions.

1. 3 E. 1. Rot. Clauſarum, M 10. **A Prohibition was granted, and after an** Attachment againſt the Biſhop, **and the Official for holding Plea after the Prohibition.**

The King's Courts that may award Prohibitions, being informed by Plaintiff or Defendant, or by any Stranger, that any Court Temporal or Eccleſiaſtical, do hold Plea, where they have no Juriſdiction, may lawfully prohibit that Court, *as well after Judgment, and Execution as before*, and if the Judge of the inferior Court, or the Party, proceeds notwithſtanding a Prohibition, an *Attachment* may be had againſt them, *or* an Action of the *Caſe will lie* againſt them; But upon a Prohibition in the Spitiual Court, the Party may appear and take a Declaration upon the Suggeſtion, and go to Trial; And if thereupon it be found againſt the Plantiff in the Prohibition, a Writ of Conſultation will be awarded with Coſts. Wood's Inſt. 570.

It is in the Diſcretion of a Court to deny a Prohibition, when it appears to them, that the Surmiſe is not true. Per Hobart Ch. J. Hob. 67. pl. 71. in the Caſe of Aſton Pariſh v. Caſtle-Birmidge Chapel. —— But all the Judges agreed, That the granting Prohibitions is not a Diſcretionary Act of the Court; but are *grantable Ex Merito Juſtitiæ*, and denied Lord Hobart's Opinion, and ſaid, That Roll Ch. J. had frequently done ſo before. Raym. 3, 4. Hill. 12 Car. 2. B. R. in the Caſe of Woodward v. Bonithan —— S. P. that they are grantable Ex Debito Juſtitiæ, and are not Honorary, and in the Diſcretion of the Juſtices. Per tot. Cur. Sid. 65. pl. 38. Mich. 13 Car. 2. B. R. in Serjeant Morton's Caſe. —— Raym. 92. in the Caſe of Ford v. Weldon. Hill. 15 & 16 Car. 2. B. R. Hide Ch. J. affirmed that a Prohibition is Ex Gratia, and not Ex Debito Juſtitiæ, but Keyling & Twiſden J. poſitively denied it.

(B) *Of what Things or Actions*, and *for what what Cauſes it lies [where] the Judges*, [before whom the Cauſe is brought] *have not* any *Juriſdiction.*

1. **If the** Collector of the Pope **in England** holds Plea **in England** of Spiritual Matters, **a Prohibition lies; For he has not Juriſdiction here to do it, for this belongs to the Spiritual Judges of the King in England.** 3 H. 4.

See (J. a) pl. 1. S. C. -- F. N. B 46. (A) in the New Notes there (a) cites S. C.

2. **If there be** one intire Contract above 40 s. **and a Man** ſues for it in a Court Baron, Severing it into divers ſmall Sums under 40 s. **a Prohibition ſhall be granted becauſe this is done to be defraud the Court of the King.** 19. H. 6. 54.

—— If a Man *owes* unto another Man 5 *Marks*, and he *ſues ſeveral Plaints* for the ſame in the County-Court, or in any other Court, againſt the Debtor, he ſhall have a Prohibition thereof, and rehearſe the Matter, and that he would defraud the King's Court of its Juriſdiction, and alſo the Party of his Anſwer &c. commanding them that they do not proceed &c. and that he command the Party to ſue at the Common Law in the King's Court; And if they will not ſurceaſe, he ſhall have an Alias and Pluries, and Attachment upon the ſame &c F. N. B. 46. (A)—So if the *Executor ſueth* in the County, or in a Court-Baron for a Debt of 5 Marks, by divers Plaints, whereas the Debt is *upon a Contract*, or upon an *Obligation*, now the Defendant may ſhew the ſame, and plead unto the Juriſdiction of the Court, or he may have a Writ of Prohibition directed unto them, that they do ſurceaſe &c. *and* if he *have Judgment* in any of the Plaints ſued *for Parcel* of the Debt, yet in the Prohibition, he *may prohibit* him in *the Plaints*, which are *depending, and that Execution of Judgment ceaſe* for the Reſidue. F. N. B. 46. (A)

If there be *ſeveral Contracts* between A. & B *at ſeveral Times, for ſeveral Sums*, each Sum *under* 40 s. and they do *all amount to a Sum ſufficient to entitle the ſuperior Court*, they ſhall be there put in Suit, and not

not in a Court which is not of Record; And ſo it was reſolved in the Caſe of the Savoy Court, and Staundforde, 24 Car. 2. Vent. 65. pl. 1. Paſch 22 Car. 2 in B. R. Anon.

In a Prohibition to the Court of the Honour of Eye the Caſe was, one *contracted* with another *for divers Parcels of Malt*, the Money to be paid for each Parcel being under 40 s. and he levied divers Plaints thereupon in the ſaid Court; Wherefore the Court here granted a Prohibition; Becauſe, though there be ſeveral Contracts, yet for as much as the *Plaintiff might have joined them all* in one Action, he ought to have ſo done, and ſued here, and not put the Defendant to an unneceſſary Vexation, any more than he can ſplit an intire Debt into divers, to give the inferior Court Juriſdiction in Fraudem Legis. Vent. 73. Paſch. 22 Car. 2. B. R. Girling v. Alders.

3. If one ſues another in the *Spiritual Court for a Chattle or Debt*, the Defendant ſhall have a Prohibition. F. N. B. 40 (H)

4. If one ſues *for Treſpaſs in* the *Spiritual Court*, Prohibition lies for the King or the Party unto the Judge or the Party, or both. F. N. B. 40 (M) S. P. F. N. B. 43 (G) —— So of Treſpaſs *Vi & Armis ſued in the County Court &c.* the Defendant may ſue a Prohibition to the Sheriff or Plaintiff, F. N. B. 47. (A)

5. If Bailiffs, *Mayors*, or others, who claim Juriſdiction to *arreſt* a Man *upon a Plaint* before them, or to attach his Goods &c. do *arreſt* one *for Treſpaſs or Contract*, who was *not within their Juriſdiction*, the Party arreſted &c. ſhall have a Prohibition directed unto them &c. F. N. B. 45. (F)

6. If a Man ſue another in the *County Court for Debts or Chattles which* do *amount to the Sum of* 40 l. then the Party ſhall have a Prohibition againſt him who is Sheriff, that he ſhall not hold Plea thereof, and that he tell the Party that he ſue in the Common Pleas. F. N. B. 46. (A) So it is if a Man will ſue in the County-Court a *Writ of Covenant or Treſpaſs unto his Damage of* 40 *s.* or more, the Party ſhall have a Prohibition for to ſurceaſe, and thereupon an Alias, Pluries, and Attachment &c. F. N. B. 46 (A)

7. If a Man ſue *in the County a Plaint of* 20 *l. and hath Judgment* to recover in that Court, yet the Defendant may ſue a *Prohibition*, commanding the Sheriff and the Suitors *not to execute* the Judgment, although he has before admitted the Juriſdiction. F. N. B. 46. (A) So after Judgment given, and Execution awarded in the County, or in other Court-Baron, which hath not Power to hold Plea of Debt of the Sum of 40 s. &c. or of Damages in Treſpaſs amounting to ſuch Sum, or more, the Party Defendant ſhall have a Writ of Prohibition unto the Bailiffs, or the Under Sheriff or Officer of the Court, that they make not Execution; and if they have diſtrained the Party to make Satisfaction, that then they *releaſe the Diſtreſs*, and that they revoke what they have done therein. F. N. B. 46. (A)

8. If one Man ſueth another in a Court-Baron, or other Court, which is not a Court of Record, for *Charters concerning* Inheritance or *Freehold*, he ſhall have a Prohibition, F. N. B. 47. (B)

9. A Prohibition was moved for *to the County Court* to ſtay a Suit there *in Debt for Tithes on a Juſticies*; For that it is not *Debitum ex Contractu*, but *Ex delicto*, *founded on a Statute*, of which the Sheriff cannot hold Plea, and *the Juſticies* doth not enlarge his Juriſdiction to other Actions, but *only enables him to hold Plea of greater Sums* than by his ordinary Juriſdiction he could; The Court held it to be a very conſiderable Caſe, and directed a Suggeſtion and a Declaration thereupon, that the Defendant might plead or demur, and ſo the Matter might come judicially before the Court. 1 Lev. 253. Mich. 20 Car. 2. B. R. Biſhop v. Corbett. S. C. 2 Keb. 416 420. and that he was informed the Court inclined ſtrongly that it did not lie.

10. An Action of *Debt on a Judgment in B. R. was brought in the Marſhalſea*, and therefore a Prohibition was granted. 2 Salk. 439. in pl. 2. an Anonymous Caſe, cites it as Trin. 11. W. 3. B. R.

(C) *Jurisdiction Spiritual.*

Scire facias against Debtor of the King in the Exchequer, who came and prayed

1. **If the** Farmer of the King sues in the Exchequer **against a Parson for detaining of Tythes parcel of the Possessions leased to him in Farm by the King, though** the Right of Tithes comes in Debate **between them there, yet the Court shall not be ousted of Jurisdiction.** 38. Ass. 20. **Adjudged; But the Report says,** Quod mirum.

Process against A. Parson of O. who had Part of his Goods, by which he could not pay, and he came and claimed them as his Tithes, and the other claimed them as his Tithes, as Parson of S. and the other thereupou pleaded to the Jurisdiction, Et non Allocatur; But the Exchequer held Plea, because it was the Suit of the King, and in his Behalf; But it is said there, Quod mirum est! and that B. R nor C. B. will not hold Plea of Tithes as here. Br. Jurisdiction, pl. 90. cites S. C. —— Br. Prerogative, pl. 74. cites S. C.

The *King has Tithes* in the Forest of Inglewood &c. *which are not in any Parish*, and *grants them to another, who brings Scire Facias against those who received them before*; In this Case the Temporal Court shall have Jurisdiction. Br. Prohibition, pl. 23. cites 22 Ass 75. —— *But* if they be in Variance *who ought to pay the Tithes and who ought to have them*, the Spiritual Court shall have thereof Jurisdiction. Br. Prohibition, pl. 23. cites 22 Ass. 75.

2. A Libel was against H. questioning some Matters as to the Validity of his *Induction* to the Church of S. but a Prohibition was granted, because the very *Title of the Patronage in this Case came in Question*, which they ought not to meddle with; Besides, the Validity of Induction is triable at Common Law, and not in the Spiritual Court. 1 Bulst. 179. Trin. 9. Jac. Holt's Case.

3. Suits for *Adultery*, unless *exorbitant and notorious*, ought to be brought before the proper Ordinary. Per Hutton J. said to have been so rul'd. Cro. C. 114. Trin. 4 Car. Isabel Peel's Case.

4 L. C. was *excommunicated upon a Libel* against him, founded upon a Presentment by the Churchwardens *for not receiving the Sacrament in his own Parish Church*, and *suggested* for a Prohibition; *that he had* alledged and *shewed* to the Official *a Certificate that he had taken it elsewhere*. The Court held that the Ecclesiastical Court had Conusance of the Cause, and hadgood Cause to proceed upon the Presentment Prima Facie; and that it lies on his Part to prove that he received it elsewhere, and upon such Plea a Prohibition lies, but not else. And because it did *not appear* to the Court *that this was pleaded in the Spiritual Court*, *nor* was there any *Affidavit made of it*, the Court denied to grant a Prohibition, and being moved twice afterwards the Court denied to grant a Prohibition, because the *Cause was purely Spiritual*, and they proper Judges of the Certificate; and that if they refuse the Plea, an Appeal will lie, but no Prohibition; besides the Allegation in the Certificate, (viz.) that he hath received the Sacrament elsewhere, is not sufficient; because, by the Rubrick, he is to receive it three Times a Year, and so the Effect of the Libel not answered. Hard. 406. Pasch. 17. Car. 2. in the Exchequer. Copley's Case.

5. A Libel was againtt the Plaintiff *for keeping Conventicles* &c. and this was *ex Promotione A. B. Publick Notary*; neither the Libel or Articles alleg'd any Presentment of this Matter, but the *Register swore that a Presentment was made by the Curate* of the Parish where &c. *and that a Copy by him delivered into Court was a true Copy* thereof. It was insisted for the Plaintiff in the Prohibition, that no Man ought to be prosecuted in the Spiritual Court to answer Articles ex Mero Officio as here he was, without a due Presentment. And so is the Statute 25 H. 8. cap. 14. as to the Prosecution for Heresy, but the Reason thereof extends to other things as well as to Heresy: Indeed that Statute is repealed, but my Lord Coke, in 12 Rep. 26. observes, that it was herein declaratory of the Common Law, and that tis very reasonable that there *should be a Presentment and Accusation by some proper Person*; For otherwise an innocent

cent Perſon, in Caſe of falſe Accuſation, would not know where to have Remedy. A Prohibition was denied; And it was ſaid by Wylde J. that they muſt judge upon the Suggeſtion only, and the ſuggeſting the Proceedings to be *ex Officio*, may be *underſtood* either of a proceeding *Officioſe* of his own Head; *or*, that it was *according to his Duty*; and here nothing appears but he did ſo. But *if* the *Plaintiff had ſuggeſted that the Law required a Preſentment by ſuch Perſons and in ſuch a Manner* &c. *he might have brought that into Queſtion.* And of the ſame Opinion were the other Juſtices, and that Faith and Credit ought to be given to their Proceedings. But Tyrrel J. held, that if it had been ſuggeſted, That No Preſentment by a Curate was ſufficient, Nor unleſs it were upon Oath &c. he ſhould have been of Opinion for a Prohibition. And Vaughan Ch. J. ſaid that if the Articles were exhibited merely ex Officio, viz. out of the Mind of the Chancellor himſelf, they were not warrantable; But that there is no Colour for this Suggeſtion, becauſe they appear to be by the Information of a Publick Notary. 2 Vent. 41. Paſch. 22. Car. 2. C. B. Grove v. Elliot.

6. The Plaintiff being *Parſon* of S. in D. and *having a Diſpenſation for two Benefices, agreed with the Defendant for 22 l. to ſerve the Cure of S.* The Defendant made his Application to the Biſhop to enlarge his Stipend; the *Biſhop ordered that he ſhould allow him* 32 *l.* per Ann. The Plaintiff paid him his 22 l. according to Agreement; and he *libelled* againſt the Plaintiff *for the Addition* by the Biſhop in the Spiritual Court, and the Plaintiff prayed a Prohibition. The Defendant's Counſel inſiſted, That this being an Allowance by Order of the Biſhop, was properly ſuable in the Eccleſiaſtical Court, and cited 3 Cro. 675. Nat. Br. 51. 4 Inſt. 491. But the Court granted a Prohibition; For there being a *Contract between the Parties*, the Biſhop had no Power to make any Order; *But if* the Curate had ſerved the Cure, and made *no Agreement*, then the *Biſhop might have allowed* him *what he thought reaſonable*, in the Nature of a Quantum meruit; and a Prohibition was granted. Freem. Rep. 70. pl. 84. Hill. 1672. C. B. Pierſon v. Atkinſon.

7. Sr. O. B's. Lady *ſued* him in the Spiritual Court *for Alimony*; and he moved for a Prohibition, and *ſuggeſted, That he had*, by Indenture, *convey'd* over *Lands to Truſtees of the Value of* 300 *l per Ann. for her ſeparate Maintenance*; *and* that they *ſhewed this in the Spiritual Court, but they refuſed to admit it* &c. Per Cur. no Prohibition; For this Court cannot take Notice of a Deed of Truſt; But if it be proper for them to move for a Prohibition any where, they *muſt go into Chancery; for the Execution of Truſts* properly belongs to them. But beſides, Alimony is a Thing that the Eccleſiaſtical Court has properly Conuſance of; and if there be a ſeparate Maintenance already, they will take it into Conſideration, at leaſt by Way of Defalcation in Alimony; and if the Party be charged too hard, he may have his Appeal. Freem. Rep. 282, 283. pl. 324. Trin. 1673. C. B. Sir Oliver Butler's Caſe.

8. A. had Iſſue 3 *Daughters, B. and C. the two Plaintiffs, and D.* and A. dying inteſtate, M. his Wife adminiſtred and dyed, and made the two *Plaintiffs* her *Executrixes*, who *had ſeveral Bonds*, ſome in their own Names, and ſome *in the Name of M. to whom they were Executrixes*; they alſo took out Adminiſtration De Bonis Non to the Father. It was *ſuggeſted in the Spiritual Court, that ſome Bonds* which they had *in their own Names were in Truſt for their Father*; and that ſome Bonds in the Mother's Name, were Debts owing to the Father, but the Mother, being Adminiſtratrix, had alter'd the Property, and taken them in her own Name; *D. ſued for Diſtribution* of theſe Debts. As to the firſt Part, the Court were of Opinion that a Prohibition ſhould go; For a *Truſt is not examinable in the Spiritual Court*; for they are not a Court of Equity. Freem. Rep. 283, 284. pl. 327. Trin. 1674. C. B. Miller's Caſe.

9. The

9. The Mayor and Aldermen of Briſtol preſented A. to the Pariſh-Church of C. in that City, and the Defendant *libelled* againſt him in the Arches, for *that he was not 23 Years old when made a Deacon, nor* 24 Years old *when he entered into Prieſt's Orders*; and the Statute of 13 Eliz. cap. 12. requires, that none ſhall be made a Miniſter, or admitted to preach, under that Age. It was *ſuggeſted* for a Prohibition, *that this Matter was triable at Law*, and not in the Spiritual Court; *becauſe*, if true, a *temporal Loſs*, viz. Deprivation, *might follow*. But the Court denied the Prohibition, and compared the Caſe to that of a Drunkard or ill Liver, who are uſually puniſhed in the Spiritual Court, tho' a temporal Loſs may enſue. 3 Mod. 67. Paſch. 1 Jac. 2. B. R. Roberts v. Pain.

S. C. 6 Mod. 188. Trin. 3 Annæ. And per Holt Ch. J. If the Libel be grounded upon the Statute of 1 Eliz. they may compel you to come to your Pariſh Church; For that Statute does directly ſubject People to the Eccleſiaſtical Law in this Point. Afterwards a Prohibition was granted, and ordered to declare forthwith.

10. The Parſon libelled againſt the Defendant *for not coming to his Pariſh Church* on Sundays. Defendant *pleaded* that *he went to another Church more commodious for him*. A Prohibition was granted, and Plaintiff declared therein. The ſingle Queſtion was, Whether a Pariſhioner is compellable to go to his Pariſh Church? It was inſiſted that he was; becauſe every Parſon is obliged not to allow a Pariſhioner of another Pariſh to partake of Sacraments with him, and by the Act of Uniformity every Man is required to reſort to his Pariſh Church. To this it was ſaid, that the *Diſtribution into Pariſhes was by the Common Law*, and if in Conſequence thereof the People were brought under a new Obligation, ſuch Obligation ought to be examinable at Common Law. The Court agreed, That an entire Neglect to go to any Church, is puniſhable in the Eccleſiaſtical Court; that this Matter was of Eccleſiaſtical Conuſance, and that Prima facie it was a good Charge, that a Man went not to his Pariſh Church. And they ſeemed of Opinion, that tho' the *Act of Uniformity* be taken as introductive of a new Law, yet the thing being purely of Eccleſiaſtical Conuſance, and proper for their Examination, a Conſultation ought to go. But there was no Reſolution. 1 Salk. 166. Hill. 3 Annæ. B. R. Britton v. Standiſh.

11. If a Man be proceeded againſt as an *Heretick* in the Spiritual Court, Pro Salute Animæ, and thinks himſelf aggrieved, his proper Remedy ſeems to be to bring his *Appeal to a Higher Eccleſiaſtical Court*, and not to move for a Prohibition from a Temporal one, which, as it ſeems to be agreed, cannot regularly determine or diſcuſs, what ſhall be called Hereſy. Hawk. Pl. C. 4. cap. 2. S. 9.

(D) In what Caſes the *Court* ſhall not be *ouſted*. *In Reſpect of Collateral Things.*

1. IN Treſpaſs, if the Right of Tithes comes in Debate between a Parſon and a Layman, being a Farmer of another Parſon, the Court ſhall not be ouſted of Jurisdiction. 20 H. 6. 17. b.

2. In an Annuity between ſpiritual Perſons by reaſon of certain Churches chargeable, grounded upon the Deed of Grant of the Predeceſſor of one, tho' the Perſons and Thing, out of which it iſſues, are ſpiritual, yet by Reaſon of the Deed the Court ſhall not be ouſted of Jurisdiction. 29 E. 3. 39. b. Adjudged.

3. If the Patron has *Indenture to go quit of* Tithe of Cheeſe &c. and is ſued in the Spiritual Court for thoſe Tithes, he ſhall have Prohibition upon this Indenture. Br. Prohibition, pl. 21. cites the Regiſter 38.

4. If

4. If a *Woman hath Title to ſue a Cui in Vita*, and *ſhe ſwears* unto the Tenant, *that ſhe will not ſue the Cui in Vita* againſt him; if ſhe afterwards ſueth forth the Writ, for which the Tenant ſueth her in the Spiritual Court for Breach of her Oath, ſhe ſhall have a Prohibition, becauſe *the Oath toucheth a Temporal Thing*, viz. Lands. F. N. B. 42 (I).

5. If *Slander, or* * *laying violent hands upon a Clerk, happen upon a Temporal Cauſe*, and the other ſues for it in the Spiritual Court, Prohibition lies; and therefore it ſeems that *of* † *thoſe Defamations, by which the Party is damnified*, the Spiritual Court cannot hold Plea; For it is ſaid, that *Crimes of Falſity and Adultery* appertain to the Spiritual Court, and Conſultation ſhall be thereof granted; and the ſame it ſeems of *Uſury*. Br. Action ſur le Caſe, pl 115. cites the Regiſter 54.

* As for arreſting him at Common Law, and he ſues in the Spiritual Courts, Prohibition lies. Br. Prohibition.

pl. 21. cites Regiſter fol. 42. and Quære fol. 51. ——— † As becauſe he gave Evidence againſt the Plaintiff who was indicted, and he ſues in the Spiritual Court for Defamation, a Prohibition lies. Br. Prohibition, pl. 21. cites Regiſter fol. 42.

6. When the *Original begins in Court Chriſtian*, altho' that afterwards *a Matter happens* in Iſſue which is *triable by our Law*, yet this ſhall be tryed there by their Law; *As* if one do ſue there for a Horſe to him deviſed, the Defendant there pleads, that the Deviſor did give this Horſe unto him in his Life-time; this is triable by our Law, yet the ſame ſhall be try'd there. 2 Bulſt. 227. Paſch. 12 Jac. Parker v. Kemp.

So where one ſued in the Spiritual Court *for Tithes of Apples*; the Defendant *pleaded* there *an Award*, and then prayed a Prohibition, for that an Award is Matter triable at Law; but it was denied by the Court. *So* if a Suit is *for a Legacy*, and the *Defendant ſuggeſts Payment*; *or* if *an Acquitance* is pleaded, no Prohibition ſhall go; Becauſe where the Spiritual Court has Conuſance of the principal Matter, there a Matter ſubſequent and dependant upon it, which is triable at Common Law, ſhall not deprive the Spiritual Court of their Juriſdiction; But it was ſaid by Coke, and agreed by Doderidge, that if that Court ſhould adjudge otherwiſe upon an Acquitance, or an Award, than according to the Common Law, in ſuch Caſes a Prohibition ſhould go. 1 Roll. Rep. 12. Paſch. 12 Jac. B. R. Anon. S. C

So where the Churchwardens libelled for a Church Rate which was ſentenc'd againſt them, and then they appealed to the Metropolitan; but pending the Appeal, one of the Appellants releaſed to the Appellee all Actions, Suits and Deman s; but the other Appellant proceeded in his and his Partner's Name to reverſe the Sentence? whereupon the Appellee pray'd a Prohibition, and ſuggeſted this *Releaſe*, ſuppoſing that it diſcharged the Appeal. But upon Demurrer it was adjudg'd by all the Judges Una Voce, that Prohibition lies not upon this Suggeſtion; Becauſe the Temporal Court has nothing to do to meddle with the principal Matter, that being merely ſpiritual, and to be determined in Court Chriſtian; And ſince the Ground of this Suit belongs to that Court, all Things dependent thereupon will belong to them alſo. And whether this Releaſe will bar both the Churchwardens or not, ſhall be determined there, and not in B. R. Yelv. 172. Hill. 7 Jac. B. R. Starkey v. Barton and Gore. —— Cro J. 234. S. C. but not exactly S P.—Noy 129. S. C. by Name of Gore v. Stark ———So where Churchwardens after the Year, were cited into the Spiritual Court to make a Preſentment Per Vim Juramenti taken by them as Churchwardens, whereupon they preſented F. for not coming to Church; and it being ſuggeſted for a Prohibition, that this was the ſame as citing one Ex Officio; For that the Determining of the Office determin'd the Oath, Atkins J. was of Opinion for a Prohibition; but North, Windham, and Scroggs e contra; For 1ſt. Where a *Matter is wholly of Eccleſiaſtical Conuſance*, there, tho' they *proceed irregularly*, no Prohibition ſhall go, but the *Remedy lies by Way of Appeal*. And here this Preſentment, tho' it be after the Party is out of his Office, yet whether this may not be by their Rules and Canons Non conſtat to this Court. Where a Matter is of Eccleſiaſtical Cognizance, if a Matter determinable at Common Law intervene, they ſhall try that, except it be in Caſe of a Modus, which by Law they cannot try; as if a Legacy be ſued, and a Releaſe pleaded, they ſhall try this Releaſe; but then it muſt be with this Difference, That when they try an incident Matter determinable at Common Law, by Reaſon of their Juriſdiction in the principal Matter, there they ſhall be tyed up to the Rules of Common Law; As in the Caſe, if a Releaſe be pleaded to a Legacy, and and there be but one Witneſs, or elſe the Witneſs is dead, and they will not admit of proving Hands, nor allow one Witneſs for a Proof, they ſhall be prohibited; For altho' thoſe Matters come under their Cognizance as Incidents, yet being Matters originally of Temporal Cognizance, they ſhall go according to the Rules of Common Law. Freem. Rep. 290. pl. 341. Trin. 1677 C. B. Anon. ——S. P. And *ſo* where *Libel* is *for the Tithes of ſuch a Cloſe*, and the *Defendant pleads* that it is *not his Cloſe, but the Cloſe of another* Perſon; this ſhall be tried in the Spiritual Court. Sid. 89 Mich. 14 Car. 2. B. R. Butler v. Yateman.

Where an Eccleſiaſtical Court has *Original Juriſdiction* of a Cauſe, yet there is ſaid to be a *Difference* in the Caſe of an *Eccleſiaſtical and Lay Perſon*, viz. that in the Caſe of the firſt, their Sentence may not be examined in the Temporal Court, but in that of the other it may; Quære tamen Arg Skin. 493. Trin. 6 W. & M. B. R. In the Caſe of Philips v. Bury.

12 Rep 67. takes the ſame Diverſity; but if Iſſue be taken at Common Law upon a Matter there, and which is triable by the Spiritual Law, in ſuch Caſe the Judges of our Law ſhall write to the Judges of the Spiritual Court to try it, and to certify, which they cannot do to the Judges of our Law. Reſolv'd per tot Cur. Mich. 8 Jac. in Roberts's Caſe.

7. So *where the Original begins here*, and a *Matter happens*, the ſame *ſhall be tried here by our Law*; as in a Quare Impedit, Able, or Not able. If it were otherwiſe, they ſhould there try nothing; This is belonging to them; But if they will there draw the Matter, Ad aliud Examen, As upon Proof of a Deed, they judge otherwiſe than we do, as in caſe of a Leaſe for Years to be made, they hold the ſame muſt be Traditione, or void; and ſo of Grant of Goods to be delivered, or not good, in ſuch Caſe we will prohibit them. 2 Bulſ. 227, 228. Paſch. 12 Jac. Parker v. Kemp.

8. A *Biſhop granted the Office of Commiſſary and Vicar-General* within his Dioceſe to Dr. B. *for Life, with all Fees* &c. thereunto belonging, which Grant was confirmed by the Dean and Chapter; Afterwards the *Biſhop inhibited the Regiſter from entering Acts by the Doctor, or paying him any Fees*; and thereupon the Doctor libelled againſt the Biſhop for diſturbing him in his Office; and the Biſhop *ſuggeſted* for a Prohibition, that *this concerned Freehold*, viz. the Office which was granted for Life; But per Ley Ch. J. Doctor B. may have a Prohibition againſt the Biſhop for a Diſturbance. 2 Roll Rep. 306. Paſch. 21 Jac. B. R. Doctor Barker v. Biſhop of Oxon.

9. Prohibition was moved for to the High Commiſſion Court, where a *Parſon libelled for an Aſſault on him.* And though they have an expreſs Authority by their Commiſſion to meddle in ſuch Affairs, yet becauſe this would make all the Ordinaries in England be to no Purpoſe, the Prohibition was granted. Hetley 19. Paſch. 3 Car. C. B. Giles v. Balam.

Raym. 88. Sharrock v. Boucher S. C. and the Suggeſtion was, that the Prebendary and his Farmers, Time out of Mind had had the Granting the ſaid Office, and that the Defendant pretended that the Diſpoſal thereof belonged to the Dean and Chapter of L. who libelled for it in the Spiritual Court, and ſo the *Freehold of it would come in Queſtion.* The Court was divided; But afterwards Hide ſaid, That the Right of the Office did come in Queſtion, and thereupon a Prohibition was granted.

10. A *Prebendary* who had a Peculiar Juriſdiction *leaſed his Prebend with all Profits, Commodities, and Advantages &c. thereto belonging.* The Queſtion was, Whether the Eccleſiaſtical Juriſdiction paſſed to the Leſſee, ſo that he might make a Commiſſary to hold Courts or not. The Ch. J. and Windham held, that he could not; For this is annexed to the Spiritual Perſon, and not to the Lay Corps of the Prebend; and Windham ſaid, that the Commiſſary is only a Deputy of the Prebendary, which his Leſſee cannot make for him; but Keeling and Twiſden contra, and held it annexed to the Corps of the Prebend, and paſſed with it. But this being the firſt Motion, the Plaintiff was ordered to declare upon his Suggeſtion, and the Defendant to demur upon it, and ſo the Point to come judicially in Queſtion. Lev. 125. Hill. 15 & 16 Car. 2. Sherock v. Boucher.

11. Spiritual Court may proceed upon an *Act of Parliament*, or other temporal Matter incident, ſo long as they proceed according to the Rules of the Common Law. 2 Lev. 64. Trin. 24 Car. 2. Juxon v. Biron.

S C. by the Name of Vaughton v. Wilſon. Freem. Rep. 129 pl. 151. accordingly, Ellis J. abſente, and reports, that the other part of the Libel was

12. A *Proctor libelled for his Fees*, and upon praying a Prohibition it was ſaid by Vaughan Ch. J. and Windham J. That no Court can better judge of the Fees which have been due and uſual there than themſelves, moſt of which are appointed by Conſtitutions Provincial, and thereby they prove them. And they granted a Prohibition as to ſome Particulars in the Libel which were of temporal Cognizance, but not as to the Suit for the Fees. Windham ſaid, that if there had been *an actual Contract upon the Reteiner*, the Plaintiff ought to have ſued at Law. But Atkins J. thought a Prohibition ought to go for the whole; becauſe, as he ſaid, Fees had no Relation to the Juriſdiction of the Spiritual Court, nor to the Cauſe in which the Proctor was retained; that the Proctor might have

have Action on the Caſe, the Retainer being an implied Contract. But a Prohibition was granted Quoad &c. Mod. 167. pl. 5. Mich. 25 Car. 2. C. B. Horton v. Wilſon.

for the *Expences of a Journey, and Charge of a Meſſenger &c.* which being as Things grounded on a Contract, or Quantum Meruit, the Spiritual Court cannot try them, but as to the cuſtomary Fees they may; though if the Cuſtom be controverted a Prohibition ſhall go. And that Atkyns J. who was for a Prohibition for the whole ſaid, that Fees differed from *Coſts*; For they may give Coſts, which *are Part of the Suit and Decree*, as at Common Law it is Part of the Damage of the Party, and in the ſame Judgment; And reports, that Windham doubted, whether the Proctor could recover his Fees by an Action of the Caſe.—— But upon a like Queſtion it was held per Cur. That it is Cuſtom and not the Authority of Conſtitutions, which intitles Proctors &c. to their Fees, and that an Action will lie for them at Common Law, and therefore the Spiritual Court ought to be prohibited; And the Rule was, That they ſhould declare upon the Prohibition. 4 Mod. 254. Hill. 5 W. & M. B. R. Johnſon v. Oxenden.

13. Libel in the Spiritual Court by *Clark of a Pariſh for* 4 *d. per Annum* due to him *by Cuſtom* from every Maſter of Family in a Pariſh; Defendant denied the Cuſtom; Prohibition was granted, becauſe Cuſtom is not triable there except in Caſe of *Penſions*. 12 Mod. 260. Hill. 11 W. 3. B. R. Pollard v. Awker.

14. *Adminiſtration* was *committed to* a Woman as *Widow of T. S.* and a *Libel* was in the Spiritual Court *to repeal* the Adminiſtration, *upon Suggeſtion that* T. S. *had a former Wife* living at the time of his Death; a Prohibition was granted. Per Holt Ch. J. 12 Mod. 432. Mich. 12 W. 3. in Caſe of Hemming v. Price, and cited 7 Rep. 43. b. 44. a. Kenn's Caſe; and Style's Rep. 10.

15. *Solicitation to Incontinence coupled with Force and Violence* does, by reaſon of the Force which is Temporal, become a Temporal Crime In Toto. 2 Salk. 552. Mich. 1 Ann. B. R. Galizard v. Rigault.

But if one commits *Adultery*, and Husband brings *Aſſault and Battery*, this ſhall not hinder the Spiritual Court; For it is a criminal Proceeding there, and no Indictment lies at Common Law for Adultery. Per Holt Ch. J. 2 Salk 552. cites 1 Roll. 295. 2 Inſt. 488.

16. A Libel was for *Eaſter-Offerings*, ſuggeſting that they had, Time out of Mind, uſed to be paid in that Pariſh. The Defendant made no Defence at all in the Spiritual Court; but *after Sentence* againſt him moves the Court of B. R. for a Prohibition. The Motion was granted *Niſi*. The Reaſon why the Court doubted, whether the Prohibition was to be granted or not, was their Ignorance of the Practice of the Spiritual Court; for the Court ſeemed clearly of Opinion, that if the *Practice of the Spiritual Court* was *agreeable to that of the Courts at Law*, viz. *to take* every Thing *Pro Confeſſo* againſt a Defendant that *makes no Defence*, and ſo give Sentence for the Plaintiff without obliging him to prove the Truth of this Caſe, then the Prohibition was not to be granted; becauſe the Cuſtom ſet forth by the Plaintiff was not denied by the Defendant, and conſequently no Occaſion for Trial of the Cuſtom. But in Caſe the *Practice* of the Spiritual Court was *not to give Sentence for the Plaintiff even in Caſe of no Defence* made by the Defendant, *without Proof made to the Court* by the Plaintiff of the Truth of his Caſe, that then a Prohibition was to be granted; becauſe then the Sentence of the Spiritual Court was *founded* plainly *upon Proof* made before them *of a Cuſtom*, which is not to be permitted, becauſe the Proof required by them, is very *different from that required by Common Law*. Doctor Pinfold, who ſpoke againſt the Prohibition, ingenuouſly owned, That it was the Practice of the Spiritual Court to require Proof. However, the Court took Time to conſider, and would not make the Rule abſolute. 10 Mod. 440. Trin. 5 Geo. B. R. Doctor Bows v. Jurat.

(E) *What Pleas ſhall ouſt the* Court of *Juriſdiction.*

Fol. 282.

Br. Juriſdiction, pl. 31. cites 38 E 3. 6. and pl. 51. cites 39 E 3. 23.

1. **If the Iſſue be** whether the Place where the Tithes **were be** in the Pariſh of one Parſon or of another, **the Court ſhall not be ouſted of Juriſdiction.** 50 E. 3. 20. b. 20 H. 6. 17. b. 22 E. 4. 22. 38 E. 3. 5. b. 39 E. 3. 23. b.

——S P. that becauſe they were at Iſſue upon the Place, the Iſſue was accepted, and the Defendant compelled to anſwer; where he ſhould have anſwered to the Juriſdiction. Br. Juriſdiction, pl. 30. cites 5 H. 5. 10.

2. **If the Iſſue be, whether the one** Parſon **has by Preſcription a** Portion of Tithes in the Pariſh of the other **Parſon, this ſhall not ouſt the Court of Juriſdiction, becauſe** 40 **Years by the Spiritual Law is good Preſcription, which it is not at the Common Law.** 20 H. 6. 17.

S. P. becauſe they meddle with that which is out of their Juriſdiction, tho' the original Thing be of their Conuſance, and this comes in obliquely. Arg. Show. 10. Mich. 4 Jac. 2. in Caſe of Clarke v. Andrews ——For the Bounds of Pariſhes are triable at the Common Law. But the Court denied a Prohibition, becauſe it *did not appear that a Plea thereof had been offered* in the Eccleſiaſtical Court. Vent. 335. Anon.

3. **If a Parſon ſues for Tithes in the Eccleſiaſtical Court, and the Defendant ſays, that the** Place, **for which the** Tithes **are ſued,** is in another Pariſh, **a Prohibition lies.**

A Prohibition ſhall not be granted *on a bare Surmiſe* that he is ſued for Tithes *by the Parſon of D. of Lands in the Pariſh of S.* unleſs it *appears in the Pleading in the Spiritual Court.* Noy. 147. Phillips v. Slacke.

4. In Treſpaſs by the Abbot againſt the Parſon, of Corn carried away, the *Defendant pleaded Compoſition*, and concluded to the Juriſdiction for Tithes; Per Morrice, the Compoſition goes in Bar, and therefore you have affirmed the Juriſdiction. But per Thorpe and Mombray, No, where he concludes to the Juriſdiction and not in Bar. Quære. Br. Juriſdiction, pl. 35. cites 38 E 3. 19.

5. In *Treſpaſs of Corn* the *Defendant claimed them as Tithes*, if his *Plea and Concluſion goes to the Action*, the Common Law ſhall take Cognizance; Per Finch; Quod non Negatur. Br. Juriſdiction, pl. 12. cites 46 E. 3. 9.

6. If a Man ſues in Court Spiritual *for a Legacy* or Deviſe, where the *other alleges a Gift of it*, yet the Spiritual Court ſhall have Juriſdiction; and this, notwithſtanding that the Party be not Executor nor Adminiſtrator. Br. Juriſdiction, pl. 13. cites 46 E. 3. 32.

7. *Treſpaſs by a Parſon* againſt a Prior, *of a Cloſe broken and Graſs ſpoiled*, the *Defendant ſaid, that it is his Glebe, and the Plaintiff claiming it as his Glebe entered* &c. Judgment if the Court will take Cognizance; & non allocatur; for *Treſpaſs done upon his Franktenement cannot be tried in Court Spiritual.* Br. Juriſdiction, pl. 41. cites 19 H. 6. 20.

S. C. Cro. E. 655. pl. 18. Hill. 41 Eliz. B. R. reports, That the Defendant in the Spiritual Court pleaded further, That on his laying his Hands peaceably on the Plaintiff there (the now Defendant) the Plaintiff there made an Aſſault upon the now Plaintiff, and the now Plaintiff defended himſelf; and that if the Defendant here had any Hurt, it was De ſon Aſſault demeſne. The Defendant here confeſs'd, That the Plaintiff here pleaded ſuch Plea there; but ſhew'd, That the Plaintiff here was condemn'd there for Non-Attendance

8. Prohibition was awarded upon a *Suggeſtion*, That the Defendant was a *Clerk*, and *aſſaulted the Plaintiff's Servant, whereupon the Plaintiff peaceably laid his Hands on the ſaid Clerk, and* that he *had alleg'd the ſame in the Spiritual Court, and they would not allow it.* And it was rul'd and adjudg'd, That the Prohibition ſhould ſtand, notwithſtanding the Statute De Articulis Cleri, cap. 3. Mo. 915. pl. 1297. Mich. 31 Eliz. B. R. Kelly v. Walker.

ance, and travers'd the Refuſal of the Plea. Gawdy held, That this Caſe was out of the Statutes of Articuli Cleri, and of Circumſpecte agatis, for here the Party had good Cauſe to beat the Clerk; and as to the Traverſe, it is not good, for *the Surmiſe is not traverſable.* And adjudg'd for the Plaintiff.

9. A *Preſentment* was Ex Officio in the Eccleſiaſtical Court, *for not frequenting his Pariſh Church*; he *pleaded*, That *this was not his Pariſh Church*, but that he had uſed to frequent another Pariſh Church, and to reſort to this. And upon Refuſal of this Plea he had a Prohibition, for that Court *cannot determine* the Precincts of Pariſh Churches, nor judge *what ſhall be ſaid a Man's Pariſh Church*; And ſo was the Opinion of the whole Court, and therefore a Prohibition was granted. Bulſt. 159. Trin. 9 Jac. Anon.

10. The *Executors gave Bond to Legatee for Payment* of his Legacy. It was held by Doderidge J. That the Obligee might either ſue in the Court Chriſtian for the Legacy, or at Common Law upon the Bond; for that the Taking of the Obligation for the Payment had not totally deſtroy'd the Nature of the Legacy. 2 Roll. Rep. 160. Paſch. 18 Jac. B. R. Gardiner's Caſe.

S. C. cited 8 Mod. 328. Mich. 11 Geo. 1. in the Caſe of Cuband v. Dewsbury. But the Court there was of a contrary Opinion; for that the Legacy was drown'd in the Bond, and that the Opinion of Judge Doderidge was not Law.

11. Upon a Libel *for Tithes*, the Defendant *ſuggeſted*, That the Lands where &c. are Parcel of Hackney Marſh; and that Time out of Mind there was *a Modus of* 18*s.* The Defendant had a Prohibition. A Conſultation was pray'd, becauſe the *Defendant had not proved his Suggeſtion within 6 Months according to the Statute*; for he brought 2 *Witneſſes*, who *proved only, That they heard that for* 40 *or* 50 *Years laſt paſt, no Tithes in kind had been for theſe Lands, but a certain Sum* of Money. But Per Ley Ch. J. in many Caſes, by the general [Word] (Proof) is to be underſtood (Concluding Proof) ſuch as may perſuade a Jury &c. But by him and Doderidge J. the Miſchief was, That Perſons were delay'd by falſe Suggeſtions, and therefore the Statute ordain'd, That all Suggeſtions ſhould be prov'd; But this means, That it ſhould be by a Probable, and not by a Strict and Concluding Proof. And by Doderidge, the Strict Proof ſhall be afterwards upon the Traverſe before the Jury; And Conſultation was not granted. 2 Roll. Rep. 434. Trin. 21 Jac. B. R. Pagget's Caſe.

12. A Surmiſe that the *Tithes belong to the Vicar, and not to the Parſon*, will not be a good Ground for a Prohibition; for the Right of Tithes is confeſſed by it, and whether they belong to the one or the other, is merely Spiritual. Noy. 147. Randal v. Knowles.—— And cites it as ſo rul'd in one Buſhell's Caſe. And in one Milbray's Caſe.

13. In any Plea in the Spiritual Court, where a *Cuſtom is alleg'd* and denied, a Prohibition ſhall be granted. Per Jones. Lat. 48. Anon.

14. The Count on a Prohibition was, That all *Cuſtoms* are triable at Common Law, and that the Defendant libelled againſt him in the Eccleſiaſtical Court, ſhewing That all Farmers of ſuch a Farm have uſed *to find Cakes and Ale* at the * Perambulation of the Pariſh, *to the Value of* 8*s. aut eo circiter*; and *averr'd, That there is no ſuch Cuſtom*, and that he alleg'd ſo in the Spiritual Court, but they refuſed the Plea. The *Defendant pleaded, That there is ſuch a Cuſtom*; Upon which the Plaintiff demurr'd. Adjudg'd, That no Conſultation ſhall go; for the Cuſtom in Farmers is no more than a Preſcription in † Occupiers, which, according to Gateward's Caſe, is not good in Matters of Charge on the Land. 2 Lev. 163. Hill. 27 & 28 Car. 2. B. R. Welby v. Herbert.

The Court at firſt inclin'd ſtrongly, that the Cuſtom was good; But Adjornatur. 3 Keb. 606. pl. 15. S. C. —— But afterwards Exception was taken, That this Preſcription by a Pariſh for a *Profit Apprendre* is void, and the Value being certain or not is not material, tho' Ratione tenuræ a Man may be bound to ſuch a Charge, yet not by bare Preſcription; for here none can releaſe this Charge, neither Parſon nor Churchwardens; And this is not like an Eaſement of Reſting at ſuch a Houſe or Pulling up a Hedge; which the Court agreed; this being originally a Kindneſs, like the Lord Carliſle's Veniſon-Paſty to the Judges in the Circuit, and Lord Bedford's Wine and Cakes. And to bring it in as a Cuſtom would deſtroy all Civility, and it is a Preſcription for an Intereſt as much as for a Corody; And Judgment for the Plaintiff in the Prohibition. 3 Keb. 609. S.C.

* In

* In the Perambulation of a Pariſh, no Refreſhment can be claimed by the Pariſhoners, as due of Right from any Houſe or Lands in virtue of Cuſtom. The making good ſuch a Right upon that Foot has been twice attempted in the Spiritual Court (13 Jac. 1. & 27, 28 Car. 2.) But in both Caſes Prohibitions were granted, and the Cuſtom declared to be againſt Law and Reaſon. 1 Gibſ. C. 239.

† See (Occupier)

It is no certain Rule, that a Thing triable at Law is not triable in Court Chriſtian, as laying Violent Hands on a Clerk, a Penſion by Preſcription &c. 3 Lev. 17. in Caſe of Cranden v. Walden.

15. A. *procured a Will out of the Prerogative Court, and gave Bond*, with Condition *to redeliver it* by ſuch a Day, but he not doing it, the Spiritual Court proceeded againſt him *Pro Læſione Fidei, and to have the Will again* into Court; The Defendant pleaded his having given Bond, and that a proper Remedy lay thereupon; but the Court rejecting that Plea, A. moved for a Prohibition; But it was objected, That the Witneſs to the Bond was dead, and probably, if put in Suit, they might not recover, beſides, the Penalty might fall ſhort of the Damages ſuſtained by thoſe intereſted in the Lands conveyed by this Will, by not having it produced, ſo that a Power to inforce the bringing it in ſeems neceſſary; Beſides that, it is in the Party's Election either to put the Bond in Suit, or to ſue in the Spiritual Court. The Court inclined to grant a Prohibition. 8 Mod. 327 Mich. 11. Geo. 1. Cuband v. Dewsbury.

(F) *Juriſdiction Spiritual.* Juriſdiction *of the Thing.*

If one ſues another in the Spiritual Court for a Lay Fee, which is

1. **IN. de Aneſſe pardonatur, for ſuing in Court Chriſtian** de Caſtris Villis Maneriis &c. & aliis Laicis Feodis & Placitum inde proſequi præſumendo in Enervationem Juris noſtri Regii & exhæredationem Coronæ noſtræ & Subverſionem Stat. Regni noſtri manifeſtam. 31 E. 3. **Rot. Patentium & Conſimile. M. 11. ib. M. 12. Conſimile 4 E. 2. Rot. Pat. M. 6.**

Lands or Tenements &c. he ſhall have a Prohibition to the Court, and may have another Writ to the Party himſelf. F. N. B. 40. (I)

2. **Mirror of Juſtices, fol. 27. cap. 2. S. 13. becauſe he held Plea** againſt the Defence [**Prohibition**] of the King, and in Prejudice of the Dignity of his Crown, **for as much as it belongs to no Judge Eccleſiaſtical to hold away ſecular Plea, except of** Teſtament and Matrimony **in Prejudice of the Power of the King.**

Watſ. Comp. Inc. 8vo. 415. cap. 21. cites S. C.— An Incumbent was inſtituted by the Vicar General, and afterwards was inducted. Afterwards the Biſhop conteſted this in

3. **If a Man be admitted, inſtituted, and inducted to a Church, and after he is ſued in the Spiritual Court** for the Inſtitution, **ſuppoſing it not to be good, and ſo** to have it to be defeated, **a Prohibition ſhall be granted; Becauſe by the Induction, the Patron has the Church as a Lay Fee, and therefore the Common Law ſhall be preferred before the Spiritual Law, and ſhall draw the Trial of the Whole to it; For otherwiſe by [this] all Quare Impedits ſhall be overthrown; For by this Means they may try all Rights of Patronages in the Spiritual Court. Tr. 15. Ja. B. a Prohibition was granted in one *Wilſon*'s Caſe accordingly. Hill. 15 Ja. B. R. between *Hitchin and Glover*, Reſolved, per totam Curiam.**

the Spiritual Court in Ireland; But upon a Writ of Error brought Here, it was agreed by Holt Ch. J. Powell, Powis and Gould J. That after ſuch Induction, which is good De Facto, the Inſtitution ſhall not be controverted in the Spiritual Court, and ſo reverſed a Judgment given in Ireland. Holt's Rep. 599. to 603. Hill. 4. & Trin. 5 Annæ Gibbons v. Biſhop of Cloyne, & e contra.

S. P. Litt. R. 165. Stevens v. Criſp. — S. P. Poph. 133. in Rone's Caſe.

4. **Mich. 15 Car. B. R. between** *Phipps and Hayter*, **per Curiam, Prohibition granted for the Church of Tuffont Evias in the County of Wilts, where the Suit was in the Arches** after Induction to avoid the Inſtitution, **becauſe the Inſtitution was** made after a Caveat entered, **not to inſtitute &c. For this does not make the Inſtitution void**

void in our Law. Hobart's Reports. 22. *Hutton's* Case. Prohibition granted.

S. P. Show. 10. Mich. 4 Jac. 2. in in the Case of Clark v. Andrews, cites Hob. 15. Sir Timothy Hutton's Case.

5. If a Man be Admitted, Instituted, and Inducted to a Church, and after he is deprived, because he was instituted against the Course of the Ecclesiastical Law; This is a void Sentence of Deprivation, because it is now a Lay Fee by Induction. Hill. 15. Ja. B. R. adjudged between *Hitching and Glover.*

Watf. Comp. Inc. 8vo. 416. cap. 21. cites S. C.

6. 35 E. 1. Rot. Patentium Membrana. 25. Cum W. B. adeptus fuit Possessionem Thesaurariæ in Ecclesia beati Petri Eborum, upon Collation of the King by Judgment in the King's Court, and he is now disturbed in his Possession by Citations and Appeals, Nos volentes Jura nostra prædicta, & Judicia in Curia nostra Rite reddita in omnibus manutenere vobis * mandamus, quod dictum Clericum in Possessione manuteneatis & si qui Provocationes, Citationes, Appellationes, aut alia Impedimenta interponere præsumpserint, per quæ &c. tunc eos arrestare & in Prisona custodire faciatis donec aliud &c.

* Fol. 283.

7. If a Town erects a Common School, and gives Allowance to a Schoolmaster, the Bishop cannot remove the Schoolmaster, and put in another at his Pleasure; But if he be a Recusant he may remove him by the Statute of 23 El. cap. 1. M. 13. Ja. B. The Bishop of Carlisle's Case. Per Curiam.

A Prohibition was prayed to the Commissary of the Archdeacon of Richmond to stay a Suit against a Schoolmaster *for teaching School without* the *Licence* of the Bishop; Prohibition was granted, because they *endeavoured to turn him out*, whereas they can only censure him, because he comes in by the Presentation of the Founder. 1 Vent. 41 Mich. 21 Car. 2. B R. 1669. Bate's Case. — Mod. 3. pl. 11. Mich 21 Car. 2. Bayle's Case. S. P. to the Ecclesiastical Court at Chester, and the Prohibition denied. ——— There was a Libel in the Spiritual Court *against* Wood, *a Schoolmaster* and Rector; *And a Prohibition* was *granted as to the Examination of* any *Matters relating to the Office* of Schoolmaster; For when the Bishop hath once granted his Licence, he has executed his Authority (especially in this Case where the School is of the Foundation of Queen Elizabeth, and the King's Chancellor is Visitor) *but they may proceed upon the Article against him for being drunk* &c. which is Contra bonos Mores. Comb. 324. Pasch. 7 Will. 3. B. R. Wood v. Hill.

8. If Administration be granted to A. where it ought not to be granted to him, and after the Administration is repealed and granted to B. because he is next of Kin, B. may sue A. in the Ecclesiastical Court, to account for the Profits of the Chattels of the Testator during his Time, and no Prohibition shall be granted; For B. cannot have Action of Trespass against A. nor has any Remedy for them at the Common Law. Hill. 15 Ja. B. R. Adjudged between Wadsworth and Andrews.

As to Accounts in the Ecclesiastical Courts. See Ecclesiastical Court.

9. King H. 4. confirmed a Church which was incorporated before by the Name of Custos & Collegium in the Diocese of Exeter, and ordained certain Number of Singing-men, in which were some Spiritual and some Lay. The Dean and Chapter, with the Bishop, abridg'd the Number to 24 in all, and after to 16, 4 Spiritual and 12 Lay, and now they will add 2 more to the Number of Spiritual Men, by which their Livings shall be less, yet no Prohibition shall be granted, because it appears that the Number was greater, and after made less. P. 8 Ja. B. per Curiam, between Withers and Owen.

10. If a Man sues in the Spiritual Court for Perjury, where the Principal, upon which, or for which the Oath was made, does not touch, nor is Spiritual Matter, of which the Spiritual Court ought to have Jurisdiction, Prohibition lies. 2 H. 4. 10.

Br. Jurisdiction, pl. 20. cites 2 H. 4. 9 ——— If Perjury be committed in the Spiritual Court in a Cause of Matrimony, Tithes, Testament, or Legacy, or of any other Thing of which the Conusance belongs to their Jurisdiction, that Court shall have Jurisdiction in such Case of Perjury, and no Prohibition lies; But it is otherwise where the Perjury concerns a Temporal Matter By all the Judges of both Benches. Jenk 184. Case 76.

Note, by if a *Man buys a Horse of me, and swears* upon the Evangelist *to pay* 10 *l. for him at such a Day*, and *he does not pay*, I shall have *Debt* at Common Law, *and Citation* Pro Lesione Fidei at the

the Spiritual Law, for theſe are diverſe Things, and it does not offend the Common Law. Br. Juriſdiction, pl. 2. cites 34 H. 6. 70.——But ſee 22 E. 4. 18. and 2 H. 4. 10. Contra there; becauſe it ariſes upon Lay Matter. But Quære if it be taken there, that he ſhall not have Suit in Court Spiritual to make him hold his Bargain, or to puniſh the Perjury. Br. Ibid ——See (D) pl. 4.

Br. Juriſdiction, pl. 20. cites 2 H. 4. 9. and pl. 27. cites 11 H. 4. 85——Br. Prohibition, pl. 2. cites 2 H. 4. 10 accordingly, but 34 H. 6. 70. contra.——Br. Prohibition, pl. 4. cites 2 H. 4. 9.—Pl. 8. cites 38 H. 6. 29.—Pl. 18. cites 11 H. 4. 88.—Pl. 9 cites 12 H. 7. 24.

11. As if a Man makes Oath to pay Debts, or make Feoffment, if he be ſued in the Spiritual Court for the Breach of the Oath, Prohibition lies; For otherwiſe he ſhall be compelled there to perform his Oath, and ſo Lay Contracts ſhall be determined in Court Chriſtian. 2 H. 4. 10. b.

12. Contra 22 Aſſ. 70. But the Ordinary cannot injoin him to pay the Debt, but to [do] Penance.

13. H. 2. ordained, that it ſhould not be lawful for a Biſhop to puniſh any Man for Perjury or Breach of Faith. Speed 458. b.

14. If a Man promiſe another to pay Debts, or to make a Feoffment, and does not perform it, the Ordinary may Ex Officio cite him for Breach of his Faith, and award him to Penance.

15. 15 E. 3. cap. 6. It is accorded, that the Miniſters of Holy Church for Money taken for Redemption of corporal Penance, nor for Proof or Account of Teſtaments, or for Travail taken for the ſame, nor for Solemnity of Marriage, nor for other Things touching the Juriſdiction of Holy Church, ſhall not be impeached, arreſted, nor driven to anſwer before the King's Juſtices &c. But this was after repealed in the ſame Year. 18 E. 3. cap. 6.

S. P. 13 Rep 40. Trin 7 Jac. in the Caſe of Modo Decimandi —— *Aſſiſe againſt a Parſon*, and made his *Plaint of a Houſe*; the *Parſon ſaid, that he is Parſon of P. and that it has been Parcel of his Church Time out of Mind* &c. *and there has been Sepulture of dead Bodies*; Judgment, if the Court will take Cognizance; and after the Defendant, by Agreement, pleaded to the Aſſiſe; Quære; For per Perſey, the Court ought not to take Cognizance. Br. Juriſdiction, pl. 71. cites 44 Aſſ. 8.

16. A Preſcription cannot be tried in the Eccleſiaſtical Court, becauſe it ought to be tried by Jury which cannot be there. In Time of E. 1.

Whether the Proprietors of a Meſſuage, called the Priory, have *Time out of Mind repaired the Chancel*, may be tried and determined in the Spiritual Court as well as a Modus Decimandi; and though the Parſon is of Common Right to repair the Chancel, yet it may be on a particular Man's Eſtate by Preſcription. 2 Vent. 239. Mich. 2 W. & M. C. B Williams v. Bond.

Libel ſet forth a Preſcription for the *Vicar of the Pariſh of M. to find a Parſon to officiate in the Chapel of G.* being an ancient Chapel *within the ſaid Pariſh* for the Eaſe of the Pariſhioners, *in Conſideration whereof* the *Pariſhioners* Time &c. *paid* him and Predeceſſors *two Quarters of Wheat, and two of Malt yearly*; Upon Suggeſtion of No ſuch Preſcription, Prohibition was moved for. And it was agreed by all, that the Things being by *Preſcription*, which properly is triable at Common Law, *did not always* ſuffice to *ouſt the Spiritual Court* of Juriſdiction; As if a *Perſion* be by Preſcription, though one may bring Annuity for it at Common Law, yet they may libel for it in the Spiritual Court upon the Preſcription; and cited F. N. B. 51. Holt Ch. J. ſaid it is the very Point adjudged in Williams's Caſe, 5 Co. 72. for it is an Eccleſiaſtical Duty, to be performed for the Advantage of the Pariſhioners; and though it commences by Preſcription, yet it *concerns Eccleſiaſtical Perſons*, and is a mere Spiritual Thing; and is not at all the ſame as if it were againſt a Layman, who is not ſo eaſily bound by Canon Law as Eccleſiaſtical Perſons are; for their Proceedings there by Preſcription ſhall not charge a Layman, or any Temporal Right. 12 Mod. 404, 405. Trin. 12 W. 3. B. R. Stone v. Jones.

Though *Preſcription*, as whether a *whole Pariſh or a ſelect Veſtry ſhould chuſe Churchwardens*, is a Matter triable at Common Law, yet Sentence is to be given in the Spiritual Court according to their Verdict. Agreed on a Motion for a Prohibition. 10 Mod. 12. Mich. 9. Ann. B. R. Baniſter v. Hopton.

See (M) pl. 9.——See Diſmes (B a)——S. P. 2 Vent. 239. in Caſe of Williams v. Bond.

17. A Parſon may ſue in the Spiritual Court for a Modus Decimandi, and no Prohibition ſhall be granted; For it is in Nature of Tythes. Co. 11. Doctor *Grant*. 16. My Reports 14 Ja. *Goſlin and* *Harden*, [per] Curiam. Hobart's Reports, Caſe 314. between Scot and Wall.

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——He may ſue in the Spiritual Court *Pro Modo Decimandi*; but if he ſues for Tithes in Kind, (which by a Modus Decimandi are utterly extinct, and the Land diſcharged

diſcharg'd of them) then upon a Plea *De Modo Decimandi* a Prohibition lies. 13 Rep. 44. Trin. 7 Jac in the Caſe of Modus Decimandi.

It was reſolved, that the Parſon might ſue for Modus Decimandi in the Spiritual Court, and cited 2 R. 3. 3. a. *But if the Pariſhioner denies it*, that they ought to ſurceaſe, and a Prohibition lies; and it ſhall be tried at the Common Law. Noy. 81. Steward's Caſe.

18. So **if the Parſon** preſcribes **to have Tithes** of Things not tithable, as of Rents of Houſes, **he may ſue for it in the Spiritual Court, and no Prohibition lies, yet no Tythes de Jure ought to be paid of them.** Co. 11. Doctor *Grant* 16.

For this might have a lawful Commencement, becauſe it might be, that this Modus Decimandi had been paid Time out of Mind for all the Tithes of the Land, whereupon the Houſes are built; And though this Land was afterwards built upon, this ſhall not take away the Right of the Parſon in this Caſe, and ſince it *might have a lawful Commencement, and that it had been Time out of Mind*, it was for this Reaſon reſolved, that Conſultation ſhould be granted; And that he might ſue for this Money in Court Chriſtian, becauſe it *is in the Nature of Tithes*, viz. a Modus Decimandi; And every ancient City and Borough has for the moſt part ſuch Cuſtom of a Modus Decimandi for their Houſes, for the Maintenance of their Parſon. And a Conſultation was granted. 11 Rep. 16. a. b. S. C

19. **So he may ſue in the Spiritual Court for** Tithes of Great Trees **which he claims** by Preſcription, **and no Prohibition lies, yet de Jure they are not tithable. Quære.** 9 H. 6. * 46.

See Diſmes (L)—* It ſeems that this ſhould be 56. the S. P. being there at pl. 42. in the Year-Book.

20. **So he may ſue there for a** Modus of the Tithes of Fiſh **taken in Iſland, and brought into the Town where** &c. **(yet no Tithes De Jure are due thereof as it ſeems.) By Reports, 14 Ja. Goſlin and Harden.**

See (U) pl. 19.—S. C. 3 Buls. 241.—S. C. Roll Rep. 119. and it was upon a Cuſtom in Yarmouth; But becauſe the Spiritual Court had rejected the Proof of another Modus differing from that which the Plaintiff had alleg'd, a Prohibition was granted; and at another Day a Prohibition was granted by Mountague Ch. J. [who was made Ch. J. after the former Prohibition granted] and all the Court, becauſe he miſtook his Modus.

21. **If there be a** Cuſtom, **that after the** Graſs **is cut and ſet in** Graſs Cocks, **the 10th Cock ſhall be aſſigned to the Parſon, and that he by the Cuſtom ſhall** have lawful Authority to make it into Hay upon the Land, **if the Owner of the Land** diſturbs him **to do it, he may ſue for this in the Spiritual Court, and no Prohibition ſhall be granted; For it is** incident to the Cuſtom **to come there to make it into Hay. Mich.** 14 **Ja. B. Reynolds and Newbury.**

And though the Cuſtom was denied, and it was ſaid, that hereby the Cuſtoms would be altered, and that they ought to be tried by the Common Law, yet the Court would not grant a Prohibition; But [the Book ſays,] it ſeems that they did not intend this, for they did not ſpeak of it; But Warburton ſeemed [of Opinion] that it was an unreaſonable Cuſtom. Roll. Rep. 420. S. C.

22. **The proper Place to ſue for a** Legacy, **is in the Eccleſiaſtical Court; becauſe it is not any Debt, but only due by the Will.**

Br. Juriſdiction, pl. 52. cites 37 H. 6. 9. per Aſhton.——J. S. libels in the Conſiſtory-Court of the Biſhop of Exeter againſt C. and D. Siſters to B. and Executors of his laſt Will, *for* a *Legacy* left &c. they *pleaded No Aſſets*, and *made a ſpecial Allegation, that A. their Father was poſſeſſed of ſeveral long Leaſes in ſeveral Tenements, and deviſed them to B. his Son; but if he ſhould die unmarried, or if he ſhould marry and die without Iſſue, then C. and D his two Daughters to have thoſe Leaſes* &c. and that *B. dying without Iſſue, they claim as Deviſees of A. their Father*, and not as Executors of B. their Brother; and the Court there over-ruled this Plea of theirs; and a Prohibition was granted; becauſe it is Matter of Title with which they ought not to meddle. 2 Show. 50. pl. 36 Paſch. 31 Car. 2 B. R. Baſtard v. Stockwell.

23. If A. gives B. 5 Marks, and he deviſes **by Will**, that whereas he owes B. five Marks, his Executor ſhall make it 10 l. **the Suit for this 10 l. may be in the Eccleſiaſtical Court; For this is not any Addition to the 5 Marks, but a New Sum given in** Satisfaction **of the 5 Marks, and to no Part of the 10 l. nor any Debt but only a Legacy.**

W. on his Marriage with M. *covenanted with J. S. to pay A. B. and C.* (who were

his Wife's Children) and every of them gacy. M. 22. Ja. B. R. between *Churly and Wood*. Prohibition denied.

10 *l.* at their reſpective of Ages of 21 Years, and gave Bond for his Performance of this Covenant. Afterwards he *deviſed* to the ſame A. B. and C. 10 *l. a-piece to be paid them at their ſeveral Ages of* 21 *Years, in Performance of his Bond and Covenant* in that Behalf, made at his Marriage, and not otherwiſe, and died. A. and B. ſued in the Spiritual Court for their Legacies. The Court at firſt inclined to grant a Conſultation, becauſe they were all Strangers to the Covenant, but it being moved in another Term, the Court doubted, becauſe it was not given as a Legacy, but in Performance of the Covenant, and not otherwiſe; And Anderſon and Rhodes ſaid preciſely, That a Conſultation ſhould not be granted, but the others heſitated, and at laſt they compounded the Matter. Goldsb 58. pl. 15. Trin. 29 Eliz. Peirce v. Davy.—2 Le. 119. pl. 164. Mich. 29 & 30 Eliz. S. C. by Name of **Davis v. Percie**, ſays, That afterwards the Juſtices looked and adviſed upon the Indenture, and finding that the Deed and Obligation were made to the Friends of the Mother, and not to the Daughters themſelves, to whom the Legacies were bequeathed, were of Opinion that a Prohibition did not lie.

If the Teſtator *charges his Executors to pay his Debts* to his Creditors, the *Creditors may ſue* them *in the Spiritual Court* on Non-payment, and a Prohibition ſhall not be granted; becauſe this Charge of the Teſtator is as a Deviſe to his Creditors. F. N. B. 44 (B) cites H. 9 E 3. Prohibition 17.—S. C. cited 2 Le. 120. pl. 164. by the Juſtices; but Anderſon Ch. J. utterly denied it in the Caſe of Davies v. Percie.

24. H. 2. ordained, That the Laity, or the King, or other, ſhould hold Plea of Churches and Tithes. Speed 458. b.

One deviſed a *Rent out of a Term for Years* whereof he was poſſeſſed *to A for Life*,

25. If a Man deviſes a Rent out of his Stock and Houſe, which he has 10 Years, he may ſue for this Rent in the Eccleſiaſtical Court, becauſe it iſſues out of a Chattle, and he has not Remedy for it at Common Law. H. 7. Ja. B. *Mary James*'s Caſe, per Curiam, and Prohibition denied.

and a Libel was for this Legacy, it was ſuggeſted for a Prohibition that this was a Legacy out of Land. After 2 Motions, the Court held, That no Prohibition ſhould be granted; Becauſe the Rent iſſued out of a Term, which was a Chattle, and is teſtamentary by the Common Law, and conſequently the Rent is ſo too; and no Prohibition was granted Sid. 279. Paſch. 18 Car. 2. B. R. Ramſey v. Roſs. —Lev. 180. S. C. by Name of **Roſſe v. Roſſe**, and Windham ſaid, That if the Term itſelf had been deviſed, it would have been ſuable for there, and therefore the Rent out of it is likewiſe, but Keeling and Twiſden doubting, they did not then grant the Prohibition, but order'd Proceedings to ſtay till the other Side be heard.———2 Keb. 5. pl. 2 S. C. by the Name of Rumney v Roſſe, & Ibid. pag. 8. pl. 22. S. C. the Court denied the Prohibition it being a mere Teſtamentary Legacy, and no more than a Deviſe of ſo much Money out of Goods, which is but a Direction, How it ſhall be paid, and the Rent is but a Chattle, and goes to the Executors.

S P. becauſe not within their Conuſance. 2 Show 50. pl. 36. Baſtard v. Stockwell.--

26. If a Man deviſes a Legacy to another out of certain Land, whereof he is ſeiſed in Fee, and the Deviſee ſues for this in the Spiritual Court, a Prohibition lies; For this iſſues out of the Land, and the Executor ſhall not have any Eſtate in the Land, till the Legacy raiſed out of the Profits (as was objected of the other Part) P. 15. Ja. B. R. *Singleton and Wade*. Per Curiam. H. 7. Ja. B.

But where A. ſeiſed in Fee, and poſſeſſed of a Leaſe for Years of Lands in D. for divers Years yet to come, deviſed all his Lands and Leaſes to T. his Son and Heir (whom he made Executor) excepting 20 l. per Annum for 7 Years, to be employed in this Manner, viz 100 l. to his Daughter E. to be paid within 5 Years, and 30 l. to his Daughter E. within 7 Years, and in Anno 1600 died, and T. entered, and took the Profits as well of the one as the other for the 7 Years, and died, and made M. his Feme (now Wife to the Defendant) his Executrix, and left Aſſets unto her, whereupon the ſaid E. the younger Daughter ſued her for that Legacy of 30 l. and now they brought a Prohibition, ſurmiſing, that this Legacy being out of the Profits of Land, no Suit could be in the Eccleſiaſtical Court for it. But in regard it was a meer perſonal Legacy, altho' it is to be raiſed out of the Profits of Land, yet being raiſed out of the Leaſe for Years as well as out of the Land, and he having raiſed it, and being dead without Payment, there being no Action maintainable for it at the Common Law by Account againſt his Executors, or otherwiſe, it is therefore Reaſon ſhe ſhould have her Remedy in the Spiritual Court; whereupon a Conſultation was awarded by all the Juſtices beſides Williams, who doubted thereof. Cro. J. 279. pl. 9. Paſch. 9 Jac. B. R.

If a Legacy be granted out of Land, this ſhall not be ſued for in the Spiritual Court; But if one by Will *deviſes Lands to be ſold for Payment of Debts and Legacies*, this ſhall be ſued for in the Spiritual Court. Per tot. Cur. Brownl. 32. Anon.

27. If a Man deviſes a certain Legacy to another, and that if his Executor has not ſufficient to pay it, then he deviſes it out of a certain Houſe, of which he is ſeiſed in Fee, the which deſcends alſo to the Executor, if the Executor has not Aſſets of Perſonal Goods, he cannot be

be ſued for this in the Spiritual Court, as payable out of the Houſe; Becauſe it has no Juriſdiction thereof. Paſch. 15. Ja. B. R. Reſolved. Per Curiam, between *Singleton and Wade.*

28. If a Man ſeiſed of Land in Fee makes B. his Executor, and by his Will in Writing deviſes that B. and 3 others ſhall ſell the Land, and that the Monies ſhall be diſtributed into 4 Parts, whereof one Part ſhall be to F. &c. and dies, and after B. will not ſell the Land, and F. ſues him in the Court Chriſtian, a Prohibition lies; Becauſe if it be a Legacy, yet it iſſues out of Land, and the Monies ſhall not be Aſſets in the Hands of the Executor. Tr. 17. Ja. B. between *Graves and Adwards*, per Curiam, and * Conſultation denied. Hobart's Reports Caſe 343. ſame Caſe.

See Aſſets.—Hob. 265. pl. 345. Edwards v. Graves, S. C. accordingly, and that it was * Fol. 285. appointed to ſpecial Uſes in Way of a Court of Equity, neither can they hold Plea of a Legacy in Equity, but where it is a Legacy in Law in Deed; For they muſt hold Plea by their Law as our Courts of Law do.

30. If a Man ſues in the Eccleſiaſtical Court to prove a Nuncupative Will of Land to revoke a Will in writing thereof, a Prohibition ſhall be granted. P. 14. Ja. B. R. *Reynold's* Caſe. Prohibition granted.

Show. 11. S. C. cited Arg. and ſays, Tho' the *Subjectum circa, quod* be ſpiritual, yet if the *Conſequence* be a Determination of a Thing belonging to Common Law Conuſance, a Prohibition will go. —— N. B. there is no pl. 29. in Roll.

31. If a Man, poſſeſſed of a Leaſe for Years deviſes that his Executor out of the Profits of it ſhall pay to every one of his Daughters 20 l. at their full Age, the Executor may be ſued in the Spiritual Court to put in Surety to pay the Legacies, and Prohibition ſhall be granted, For this is to iſſue out of a Chattle. Hill. 11. Ja. B. Per Curiam. *Prowe's* Caſe.

A Man having a *Legacy deviſed* unto him *out of a Leaſe for Years, which Indenture* of Leaſe *was in the Hands of a Stranger*; The Legatee ſued the Executors in the *Spiritual Court* to aſſent to the Legacy; And a Prohibition was prayed, becauſe they order that the Leaſe ſhould be brought into Court, which they ought not to have done, being in the Hands of a Stranger; But the Prohibition was denied by the whole Court; For they *may make an Executor aſſent to a Legacy out of a Leaſe, and* therefore *may order, that* tho' *the Leaſe* be *in the Hand of a 3d Perſon*, that it ſhall *be brought in* to execute it; For the Order, although it be general, binds only the Defendant. Mar. 96, 97. pl. 167. Trin. 17 Car. in C. B. Anon.

32. If a Man deviſes, that his Executor ſhall ſell certain Land after his Death, and with the Monies, for which it is ſold, that he ſhall pay certain Legacies; If he ſells the Land after the Death of the Teſtator, and the Legatees ſue him in the Spiritual Court for thoſe Legacies, a Prohibition lies; Becauſe thoſe Legacies iſſue out of Land, which is not within their Juriſdiction, but their Remedy lies in Chancery. P. 4 & 5. Ma. 151. 5. by the Juſtices of both Benches. Contra D. 9. El. 264. 41. Opinion. M. 14. Car. B. R. between *Tawyer and Whiſtler*, a Prohibition granted per Curiam. Hobart's Reports, Caſe 343. between *Adwards and Graves.*

A. deviſed that J. S. ſhould ſell his Land, and that his Daughter ſhould have one Part of the Money for her Advancement, and gave other Parts to others in certain Sums, and died; The Executors ſold, but refuſed Payment of the Legacies; The Daughter libelled in the Court Chriſtian. It was the Opinion of all the Juſtices of both Benches, that a Prohibition well lies in this Caſe, in as much as this is not a Legacy Teſtamentary, but out of Land, by reaſon of the Will, the Performance whereof the Court Chriſtian has nothing to do to intermeddle with; but the Party may have Action of Account at the Common Law. D. 151. b. pl. 5. Mich. 4 & 5. P. & M. Anon. —— S. C. by the Name of Paſchal v. Keterich accordingly, Bendl. 60 pl. 104. And there is a Nota, That if Teſtator in ſuch Caſe *deviſes his Lands to his Executors for a Term to levy a certain Sum out of the ſame to pay it to the Deviſee*, yet if after Sale the Deviſee ſues in Court Chriſtian for the Legacy, a Prohibition ſhall be granted.—— D. 151. b. Marg. pl. 5. ſays that in Mich. 36. & 37. Eliz. B. R. it was ſo adjudged in Lord Rich's Caſe.

33. In the Statute of 21 H. 8. cap. 5. of Probate of Teſtaments, there is a Proviſo, That if the Teſtator deviſes by his Will, any Land, Tenement, or Hereditament to be ſold, that the Monies thereof coming, nor the Profits of the ſame Land for any Time to be taken, ſhall not be taken as

as any of the Goods or Chattels of the Teſtator. (By the Coherence it ſeems it is intended to be put in the Inventory.)

Tho' it is generally true, That all the perſonal Eſtate of the Deceaſed, of what Nature or Quality ſoever it be, ought to be put into the *Inventory*, and appraiſed, yet the *Goods, to which the Husband is intitled as Adminiſtator to his Wife*, are not, *nor Goods given away in the Life-time of the Deceaſed*, and actually in the Poſſeſſion of the Perſon to whom they were given; As for Inſtance, an Adminiſtratrix exhibited an Inventory to the Ordinary, in which ſhe put ſome Goods, which the Inteſtate had given to a younger Child, and which were then in her Poſſeſſion; For her younger Child and ſhe being ſued in the Spiritual Court for thoſe Goods, ſhe *pleaded* this *Deed of Gift*, and the Plea being rejected by that Court, ſhe moved for a Prohibition, and had it. 2 Bulſ. 315 Hill. 12 Jac. James v. James.

34. P. 15 Car. between *Roper and Mattingley* Prohibition granted, per Curiam, where the Suit was to put the Money for which the Land was ſold into an Inventory, and this at the Suit of the Legatees.

Hob. 265. pl. 345. S. C. —See pl. 28.

35. If the Eccleſiaſtical Court holds Plea of a Legacy in Equity, a Prohibition lies; For they ought to hold Plea by their Law, as other Courts of Law do. Hobart's Reports Caſe 343.

36. If the Archdeacon grants to one the Office of Regiſter of the Archdeaconry by his Patent for Life in Reverſion, and after the Grantee is a Recuſant Convict, by which the Archdeacon, ſuppoſing him to have forfeited the Office, by another Patent, grants it to another for his Life, and he libels in the Spiritual Court againſt the firſt Grantee, to deprive him of the Office for the Recuſancy, and becauſe it was granted in Reverſion, and that he may have the Office according to his Patent, a Prohibition ſhall be granted; Becauſe here the Office which is a Matter of Franktenement, comes in Debate, and which of the 2 Patents ſhall be preferred, which does not belong to their Juriſdiction. Mich. 15 Ja. B. R. *Kifte and Bridgeman.* Reſolved, and Prohibition granted.

* Fol 286. S. C. cited 4 Mod. 28 Hill. 3 W. & M. B. R. in the Caſe of Jones v. Beau.

37. If there be a Queſtion between 2 upon ſeveral Grants, which of them ſhall be Regiſter of the Court of the Biſhop, this ſhall not be tried in the Biſhop's Court, but at the Common Law; For tho' the Subjectum circa quod be Spiritual, yet the Office itſelf is temporal. Hill. 8. Ja. B. ſaid by Coke to be *Skinner and Mingey*'s Caſe.

38. If the Biſhop grants the Office of Chancellor to A. and B. and after A. releaſes to B. and then B. dies, and after the Biſhop gives it to R. againſt whom A. ſues in the Eccleſiaſtical Court, ſuppoſing his Releaſe to be void, a Prohibition ſhall be granted; becauſe the Office is Temporal, tho' he exerciſes the Office in Spiritual Matters. H. 8. Ja. *Robottam*'s * Caſe reſolved, and Prohibition granted, per Curiam.

Palm. 450. S. C. by Name of Glanvil's Caſe. —— Godb. 390. by Name of Sutton v. Chancellor of Glouceſter's Caſe. ——

39. But if a Chancellor be ſued in Court Chriſtian to be deprived for Inſufficiency, as not having Conuſance of the Canon Law, no Prohibition lies; becauſe they are the proper Judges of his Ability, and not the Judges of the Common Law. P. 3 Car. B. R. Caſe, Chancellor of Glouceſter. Reſolved per Curiam, and Prohibition denied.

——Noy 91. Dr. Sutton's Caſe. S. C. ——Latch. 228. S. C. —— Cro. C 65. S. C. —— S. C. Cited Arg. 4 Mod. 28. And ſays that it was the Opinion of Juſtice Croke, who reported that Caſe, [but it ſeems there to be the Opinion of the Court] that the Doctor might have an Aſſiſe to try it, if he had any Wrong done him, which ſhews he had a Freehold; and if ſo, then admitting the Spiritual Court can try the Sufficiency of a Chancellor, yet if the Temporal Courts have alſo in the ſame Caſe a Juriſdiction in Reſpect of the Freehold, the Authority of the Eccleſiaſtical Court ſhall be ouſted — S. C. Cited Comb. 306. in Caſe of Jones v. the Biſhop of St. Aſaph; but the Court there denied that Caſe to be Law. And Eyres ſen. J. ſaid the High Commiſſion Court at that Time bore all before it, no one durſt ſpeak againſt it but my Lord Coke, and it bore him down at laſt.

40. If a Vicar ſues the Parſon appropriate of the ſame Pariſh to ſhew Cauſe why a Terrar, made concerning the Land and Tithes appertaining to the Vicar, ſhall not be allowed after a Trial at Common Law againſt the Vicar for the ſame Thing, a Prohibition lies, becauſe they cannot determine Matter of Franktenement there. P. 11 Car. B. R.

B. R. between *Pearſe* Plaintiff, and *Sir G. Winter and Cheſter his Farmer* Defendants, of the Pariſh of St. Philips in Glouceſter, where the Vicar would have Tithes of Grain, and ſuch like, ariſing from Land, whereof he had before Tithes of Hay and Paſture before it was plowed.

41. If a Man ſets out his Tithes by Severance from the 9 Parts of the 10, and after carries away the 10th Part, the Parſon cannot ſue for this in Court Chriſtian, becauſe by the Severance from the 9 Parts, it was become a Chattel, for which he might have Action of Treſpaſs. Dubitatur. P. 40 El. B. R. between * *Leigh and Wood.* Br. Juriſdiction, pl 32. cites 38 E. 3. 6.-- * S. C. Cro. E. 60. pl. 8. where the Plaintiff *ſurmis'd* for a Prohibition, That he ſet forth the Tithes, *and afterwards for ſome reaſonable Cauſes* (not ſaying what) *he detained Part of them*, and that the Parſon had ſu'd him for them in Court Chriſtian, and thereupon it was demurr'd; And Fenner and Clench held it to be good Cauſe for a Prohibition, they being, by the ſetting out, become Lay Chattles, for which he may have Treſpaſs or Detinue at Law; but Gawdy and Popham contra, Becauſe this Suit is againſt the Party himſelf that ſet them forth, tho' the Parſon, if he would, might take his Remedy againſt him at Common Law; and that this is prov'd by the Words of the Statute of 32 *H.* 8. That *if any do not ſet out, or do detain or with-hold his Tithes* (which is to be intended after they are ſet out) *he ſhall be ſued in the Court Chriſtian &c.* For otherwiſe Miſchief would enſue to the Parſon, becauſe he would ſecretly ſet his Titles forth, ſo as the Parſon ſhould not know thereof, and then afterwards would carry them away. Et adjornatur.——S. C. Mo. 912. pl. 1287. reports, that it was agreed that if the Owner himſelf does not ſet forth the Tithes, or carries them away after they are ſet forth, there the Suit ſhall be in the Spiritual Court for them. *But if* the Owner ſets them forth, and *a Stranger carries them away*, no Suit ſhall be for them in the Spiritual Court.——S. P. 12 Rep. 23. Trin. 44 Eliz. Sprat v. Heal ———But where after Severance a *Stranger carried them away*, and the Parſon libell'd againſt the Owner of the Land for the Tithes, who pray'd a Prohibition; it was adjudg'd that no Prohibition ſhould go, becauſe he might plead the ſame Matter in Bar in the Spiritual Court. 4 Le. 7. pl. 30. Hill. 26 Eliz. B. R. Gerrard's Caſe.

A Pariſhioner ſevered the Tithes from the 9 Parts, but being in a Cloſe the Gate was locked, ſo as the Perſon could not come at them, and he ſued in the Spiritual Court; and there the Queſtion was whether the Gate were locked or open. And thereupon a Prohibition was brought, ſuppoſing this to have been a Temporal Matter; for the Tithes being ſevered are Lay Chattels. But the Court ſaid, That altho' the Tithes be ſevered, yet by the Statute they remain ſuable for in the Spiritual Court, and then the other is but a conſequent thereof, and therefore is triable there; And if they refuſe to allow his Proofs, as it was ſurmiſed, (but not within the Prohibition) it was ſaid that he ought to appeal. Cro. E. 843. 844. pl. 26. 43 Eliz. in C. B. Blackwell's Caſe.

42. If the Churchwardens of a Pariſh have us'd Time out of Mind to elect the Clerk of the Pariſh, and a Suits in the Eccleſiaſtical Court to remove him, and put in one of the Election of the Parſon, a Prohibition lies. Mich. 22 Ja. B. R. between *Walpoole and Coldwell*, for the Clerk of St. Thomas Apoſtles in London, Prohibition granted by Conſent of the Parties to try the Cuſtom. Intratur. Hill. 22 Ja. Ja. Rot. 466. and like Prohibition granted between *Browne and Crawſhawe*, for Whitechapel Pariſh. P. 19 Ja. B. R. Rot. 177. And like Prohibition granted between *Beaumont and Weſtley*, for the Pariſh of St. Cuthbert's in Wells in the County of Somerſet. P. 11 Car. B. 2 Bulſt. 154. S. C. but not S. P.—— Suit was in the Spiritual Court to eſtabliſh a Clerk choſe by the Parſon, by Reaſon of the Canon. And the Churchwardens and Pariſhioners prayed a Prohibition, upon Surmiſe of a Cuſtom that the Pariſhioners at their Veſtry ought to chooſe him; and after diverſe Motions a Prohibition was granted; for they held that it was a good Cuſtom, and that the Canon cannot take it away. Cro. J. 670. pl. 9. Trin. 21 Jac. Jermyn's Caſe —— In ſuch a Caſe, Mich. 16 Car. B. R. The Court ſaid they would adviſe, and appointed that Precedents ſhould be ſearch'd what had been done in ſuch Caſes. And the Caſe of Trin. 21 Jac. was cited, but nothing more is ſaid of the Matter. Cro. C. 589. Orme v. Pemberton. ——By Cuſtom he is eligible by the Pariſhioners notwithſtanding the Canon, and then the Election is determinable at Common Law only. Per Hale Ch. B. Hard. 379. Mich. 16 Car. 2. in Caſe of Dawſon v. Fowle.

43. If a Clerk of a Pariſh claims by a Cuſtom to have a certain Quantity of Bread at Chriſtmas of every Inhabitant of the Pariſh, and ſues for it in the Spiritual Court, a Prohibition lies; for it is not like to a * Penſion due to a Parſon; for a ‖ Regiſter of the Spiritual Court may have an Aſſiſe of his Office. Mich. 8 Car. B. R. between *Marſh and Brooke*, per Curiam reſolved, and Prohibition granted A Clerk of the Pariſh may ſue in the Court Chriſtian for his Fee, which are called Lar.

Citiones Charitativæ. Arg. 2 Roll. Rep. 71. granted to York, the Plaintiff there being the Parish Clerk of Bertroll in Yorkshire.

Hill. 16 Jac. in Bishop's Case; cites the Register, fol. 52. for he is Quodam modo an Officer Spiritual; and cites 21 E. 4. 47.

* See Pension.——*Pensions* shall be demanded in the Spiritual Court. Br. Prohibition, pl. 21. cites the Register, fol. 47.———Pension issuing out of an Appropriation, *tho' by Prescription*, is suable in the Ecclesiastical Courts; for it could not begin but by the Grant and Institution of Spiritual Persons. And therefore if the Duty be travers'd, it may be tried there. Per Holt Ch. J. Salk. 58. Pasch. 12 W. 3. B. R. Smith v. Wallis —— || S. P. 1 Salk. 333. Mich. 13 W. 3. B.R. in Case of Ballard v. Gerard

44. If a Suit be in the Spiritual Court against a Feme for Exercising the Trade of a Midwife without Licence of the Ordinary against the Canons, a Prohibition lies; for this is not any Spiritual Function of which they have Conusance. Tr. 9 Car. B. R. between Benskin and Cripps resolved, and Prohibition granted to the Court of Audience.

S C Hob. 246. pl. 313. Mich. 16 Jac.—Het. 132. S. C. and P but is Hill. 4 Car. C. B. and seems to be taken from Hobart.

45. If a Presentment be made by the Churchwardens of a Parish in the Ecclesiastical Court, that J. S. a Parishioner is a Railer and a Sower of Discord among the Neighbours, a Prohibition lies; for this belongs to the Leet and not to this Court, unless that it was in the Church, or such like. Hobart's Reports, Case 311. between *Smith and Pannel*, Prohibition granted.

S. C. Hob. 248. pl. 321. Mich. 16 Jac.—Het. 133. S. C. Hill. 4 Car. C. B. but seems to be taken from Hobart.

46. If the Parishioners of a Parish libel in the Ecclesiastical Court to make Proof of diverse Manners of Tything in Perpetuam rei Memoriam, a Prohibition lies; for this [is] conceived to be a strange Attempt. Hobart's Reports, Case 319. between *Napper and Steward*.

* Fol 287. Cognizance of *Ways for carrying Tithes* belong to Court Christian, as appears by 2 Ed. 6. and F. N. B. in Consultation 51. A. and Linwood in his Treatise of Tithes. Jo. 230. Halsey v. Halsey.

47. If a Suit be in the Spiritual Court Ex Officio, or otherwise, for * a Way to the Church for the Parishioners, a Prohibition lies upon a Surmise that it is a common Highway; for it shall be tried at Common Law whether it be a Highway or not. Tr. 15 Car. B. R. between *Smith and Bennet*. Per Curiam, Prohibition granted.

S. P. And a Prohibition was granted. 2 Roll. Rep. 41. Trin. 16 Jac. B. R. Hill. v. Bedoe.

48. If the Churchwardens of a Church sue for a Way to the Church, which they claim to appertain to all the Parishioners by Prescription, a Prohibition shall be granted; for it is temporal. P. 16 Ja. B. R. between the Churchwardens of *Bithorne and Bowe*, Prohibition granted accordingly.

S. P. and S. C. Roll. Rep. 259. pl. 29. And there Coke Ch. J took Notice of the Custom for the Preacher at Paul's to dine with the Lord Mayor, and ask'd whether he was suable or this in the Spiritual Court.——See (E) pl. 14.

49. If the Churchwardens of a Church sue J. S. in the Ecclesiastical Court, because he and all those who have been seised of such an House &c. at the Perambulation of the Parishioners of the Parish &c. have us'd to find a Refreshing for them, scilicet, Bread and Ale, and to suffer them to rest themselves there; a Prohibition shall be granted, because they claim it in Nature of a Corody, and if this shall be suffered, great Inconvenience may ensue. M. 13 Ja. B. R. The Wardens of the Church of *Uffington's* Case in the County of Berks resolved, and Prohibition granted. Hill. 15 Car. B. R. Like Prohibition prayed for the same Parish in one *Lock's*, and the Churchwardens of the same Phurch upon a Suit by them in the Spiritual Court, but it [was] not granted, but referr'd to Justice Jones when he comes in his Circuit.

30. If

50. If the Parishioners of a Parish have used Time whereof Memory &c. to elect one Churchwarden, and the Vicar another, and after a Canon is made that the Vicar shall elect both, and he does accordingly, and the Parishioners elect one according to the Custom, and the Ordinary disallows him and establishes the two elected by the Vicar, a Prohibition shall be granted. P. 5 Ja. B. R. The Parishioners of *Rolvendon* in Kent adjudged.

S. P. For otherwise the Parson might have all the Authority of his Church and Parish. Per Hubbard. Noy. 31. Butt's Case. The Canons ought to be according to the Law and Custom of the Realm, and they cannot make Churchwardens that were *Eligible* to be *Donative*, without an Act of Parliament; and the Canon is to be intended where the Parson had the Nomination of a Churchwarden before the making of the Canon. Per Coke Ch. J. Noy 139. Anon.——S. C. Cited Vent. 267. Hill. 26 & 27 Car. 2. B. R. in an Anonymus Case, where the Court said that Custom would prevail against the Canon.

51. Tr. 7 Car. B. R. between *Shirley and Brown*. Rot. 1391. A Prohibition granted against the Churchwardens chosen by the Parson of St. *Magnus* near London Bridge, by Force of the Canon, upon a Surmise that the Parish has a Custom to elect both Churchwardens. P. 4 Car. B. R. Rot. 420. *Draper and Stone* for *Abchurch* in London, Prohibition granted.

S. C. cited, and a Mandamus granted to swear the Churchwarden chosen by the Parishioners, Raym. 439. because the Ecclesiastical Court cannot try the Custom of chusing, as is here alleg'd. 440. Pasch. 33 Car. 2. B. R. Carpenter's Case.——See Mandamus (H. 3)

52. If the Wardens of a Church sue in Court Christian, J. S. supposing by their Libel that he and all whose Estate he has in certain Land next adjoining to the Church-yard have used Time whereof Memory, to repair so much of the Fences of the Church-yard as was next adjoining to the said Land, a Prohibition lies; for this ought to be tried at the Common Law, inasmuch as it is to charge a Temporal Inheritance. Mich. 14 Car. B. R. The Churchwardens of *Claydon and Duncomb*.

The Ecclesiastical Court can have no Conusance till the *Custom* be tried at Law, but that being tried and found against the Plaintiff in the Prohibition, a Consultation will go. Carth. 33. cites the Case of Vanacre v. Spleen.

53. If a Suit be in the Spiritual Court by the Official Ex promotione of one Administrator against another Pro salute animæ for a temerarious Administration by Defendant of the Goods of the Intestate, and to hinder him to make an Inventory, and to shew in an Inventory annex'd the particular Goods; Prohibition lies, because otherwise they shall * try the Property of the Goods there, where he may have Trover and Conversion, or Detinue at the Common Law for them. Mich. 16 Car. B. R. between *Say and Harward*, Per Curiam. Prohibition granted to the Consistory of Winton in 2 Suits.

* They may, in such Case of *Defendant's denying the Property in the Plaintiff, and claiming it himself*, try the Property there. Per Hussey Ch. J. Kelw. 110. b. pl. 34.

54. For *Marriage Money*, the Suit lies in the Spiritual Court, and and therefore Prohibition does not lie thereof. Br. Prohibition, pl. 21. cites the Register, fol. 46.

If a *Man gives Goods in Marriage with his Daughter*, and afterwards they are divorced, the Wife may sue in the Spiritual Court for the Goods, and no Prohibition will lie thereof. F. N. B. 44. (C)

55. Where the Spiritual Court ought to have Jurisdiction, Prohibition does not lie. Contra, where the Temporal Court ought to have Jurisdiction. Br. Prohibition, pl. 23. cites 22 Ass. 77.

56. If a Man sues in the Spiritual Court, for *Rent reserved upon a Lease of Tithes*, or Offerings, Prohibition lies; for this is a Lay Rent. Br. Prohibition, pl. 3. cites 44 E. 3. 32.

57. Of a *Thing which arises upon their Judgment in their Spiritual Court*, the Suit for it shall be in the Spiritual Court. Per Hill, Br. Jurisdiction, pl. 26. cites 11 H. 4. 85.

57. If

58. If a Man *ſtrikes* a Chaplain, or *a Man infra ſacros Ordines*, and he ſues him in the Spiritual Court, Prohibition lies; For they uſe there to excommunicate him for this Offence, and will not abſoil him of it till he has made a Satisfaction to the Party grieved. Br. Prohibition, pl. 18. cites 11 H. 4. 88.

59. An Action upon the *Caſe* is maintainable *for not doing divine Service*, though it be a ſpiritual Matter. Br. Juriſdiction, pl. 43. cites 22 H. 6. 52.

60. In *Treſpaſs in B. R. againſt a Parſon* for *taking Goods, claiming them to be Tithes by Cauſe of Silva Cædua*, and the Parſon ſued him in the Spiritual Court for the ſame Matter, and upon this the Court granted a Prohibition. Br. Prohibition, pl. 6. cites 38 H. 6. 14.

Br. Spoliation, pl 4. cites S. C.

61. A Prohibition ſhall go *where the Right of Advowſon comes in Debate* in Suit of Spoliation in the Spiritual Court. Br. Prohibition, pl. 7. cites 38 H. 6. 19.

62. *Spoliation*, and Debate upon *Appropriation* ſhall be determined in in the Spiritual Court. Br. Juriſdiction, pl. 110. cites 38 H. 6. 20.

63. A Prohibition lieth for *Chauntries*, *Chapels*, *Prebends*, and *Vicarages* &c. F. N. B. 40. (G)

64. If one be ſued in the Spiritnal Court *for the Collation to a Grammar School* a Prohibition lies. F. N. B. 40. (L)

65. The Chancellor of N. made an *Order*, and publiſhed it there, *that every Woman coming to be churched* after Child-bearing, according to the Law of the Church of Eng. *ſhould come covered with a white Veil*, and *that Eliz. Shipden, being admoniſhed of it, refuſed to conform, for which Contempt ſhe was excommunicated*, and a Certificate thereof into Chancery, whereupon a Capias was to be awarded againſt her; to prevent which, a Prohibition was moved for, alleging this to be a New Law, not allowed by any Cuſtom or Canon &c. and offered Obedience if there was any ſuch, whereupon the Judges deſired the Reſolution of the Archbiſhop, who convened all the Biſhops then in London to the Number of 6, and they all agreed and certified, That this was an *antient Cuſtom in the Church of England*; thereupon the Prohibition was denied. Palm. 296. Trin. 20 Jac. B. R. Shipden v. Dr. Redman, Chancellor of Norwich.

S. C. and reported Verbatim alike. Litt. Rep. 51.

66. A *Chaplain*, who was *under a Vicar, libelled againſt him for a Salary*, and preſcribed that the Vicar ought to pay him 4 l. per Annum for his Salary; The Vicar *ſuggeſted* 1ſt. *That the Chaplains* were eligible by himſelf, and therefore becauſe that *Chaplain was not choſen by him*, he is not Chaplain, but is in of his own Wrong. 2dly, That the *Preſcription* for Salary was *triable at Common Law*; It was inſiſted for the Chaplain, that the Salary was Spiritual, as the Cure is, like the Caſe in D. 58. pl. 4. [it ſhould be pl. 8.] But a Prohibition was granted, till it was determined to whom the Election appertained. Hetl. 36. Mich. 3 Car. C. B. the Vicar of Hallifax's Caſe.

67. In Caſes of *Licences to marry*, granted by the Ordinary, no Prohibition lies, but the Remedy is by Appeal; But if it comes in Queſtion in Eccleſiaſtical Court, whether the Words of the Act of 25 H. 8. give ſufficient Power to the Archbiſhop to grant Licence there, if Eccleſiaſtical Court adjudge againſt the Power, Prohibition lies, and not otherwiſe. Jo. 259. Paſch. 8 Car. B. R. Matingley v. Martin.

68. *Aſſets* or *not Aſſets* is triable by the Spiritual Court; Mar. 97. Trin. 17 C. B. Anon.

69. If there be a *Feoffment of Lands aud Tithes without Livery*; And upon a Libel for the Tithes, the Court does adjudge the Tithes to paſs, though no Livery, a Prohibition ſhall be granted. Vent. 41. Mich. 21 C. 2. B. R. [But this ſeems only to be a Point mentioned in Bates's Caſe, and to refer to the Caſe of Flutter v. Whiskin Paſch. 35 Eliz. cited by Coke Ch. J. in Cro. J. 269, 270. in Robert's Caſe.]

70. Libel was by the Church-wardens of &c. in the Eccleſiaſtical Court *for* 1. *l.* 10 *s.* 8 *d. upon a Cuſtom* for Payment of ſo much *for being buried in the Body of the Church*; and a Prohibition was prayed, *ſuggeſting*

that

that there was no ſuch Cuſtom; The Court held ſuch a Cuſtom muſt be good, becauſe the Pariſh is to be at the Charge to make up the Church Floor; but if the Cuſtom be denied, it muſt be tried at Law, and therefore inclined, that a Prohibition was to go, tho' it was objected, That this Duty belongs properly to the Eccleſiaſtical Court, and no Remedy lies for it elſewhere; For ſo is the Caſe of a *Modus decimandi*, which may be demanded in the Spiritual Court, but if the Cuſtom be denied, there ſhall be a Prohibition, and ſo the Caſe of a Mortuary, ſince the Statute of H. 8. And afterwards it being moved again, Hale Ch. J. being preſent, the Prohibition was granted, which, Hale ſaid, was ſometimes granted *Pro Defectu Juriſdictionis*, and ſometimes *Pro Defectu Triationis*, as in this Caſe and others, where the Ground of the Suit is Preſcription; For in their Law they have ſometimes allowed Preſcriptions of 20 Years, ſometimes of 40 Years, but we admit none but what are *De Temps dont &c.* Vent. 274. Mich. 27 Car. 2. B. R. Anon.

71. In a Suit for *Fees for ſwearing Churchwardens*, and taking their Preſentments a Prohibition was granted. 1 Salk. 330. Hill. 5 W. & M. B. R. Goſlin v. Elliſon.

72. A. was libelled againſt in the Spiritual Court Ex Officio for teaching School contrary to the *77th Canon*, Anno 1603. which is that no Man ſhall teach a School, except licenſed by the Biſhop, and otherwiſe qualified, as the Canon preſcribes, and now A. prayed a Prohibition, ſuggeſting that every Man at Common Law may teach and inſtruct another, That all Canons, contrary to the Law of the Land are void, and do not bind the Laity whereof he is one, that the Statute of 1 *Jac.* and 13 *Car.* 2. *have appointed Penalties* for keeping School without Licence; And that the Expoſition of all Statutes belongs to the King's Courts, and the ſingle Queſtion was *How far this Canon binds a Layman*, which Holt ſaid was no Queſtion to be determined on a Motion, and therefore granted a Prohibition, and that they declare upon it. 12 Mod. 192. Paſch. 10 W. 3. B. R. Oldfield and Sir Richard Raines.

S. P. F. N. B. 40 (L) in the New Notes there (a)—— And Holt Ch J. ſaid, That Prohibitions have deſervedly gone to ſtop Proceedings for teaching School without Licence, becauſe 'tis a Point never yet determined. 12 Mod. 518. in the Caſe of the King v. Hill. —— But a Prohibition having been granted to the Spiritual Court to ſtay Proceedings there on a Libel for teaching School without Licence, and it being moved in Chancery to diſcharge the Prohibition, Lord Keeper declared that he always was and ſtill is of Opinion that Keeping School *is by the old Laws of England of Eccleſiaſtical Coruſance*, and therefore diſcharged the Order for a Prohibition. Wms's Rep. 29 to 32. Mich. 1700. Cox's Caſe.— *But* upon being moved, That it was for *teaching School generally, without ſaying what School*, and that the Court Chriſtian could not have Juriſdiction of Writing Schools, Reading Schools, or Dancing Schools &c. which his Lordſhip aſſented to, and thereupon granted a *Prohibition as to the teaching all* Schools *but Grammar Schools*, which he thought of Eccleſiaſtical Cognizance. Williams's Rep. 32, 33. ut Supra.

73. *Whether Vicarage or Not* ſhall be tried in the Spiritual Court; and ſo 'tis of an *Appropriation*. 3 Salk. 378. Trin. 12. W. 3. B. R. Smith v. Waller.

74. Suit cannot be in Spiritual Court for the *Fees of a Regiſter*; for the Office of Regiſter of Archdeacon is a Freehold, for which an Aſſize will lie; And if ſo, a Denial of the reaſonable and uſual Fees thereof will be a Diſſeiſin of his Office. Per Holt. Ch. J. 12 Mod. 608, 609. Hill. 13 W. 3. B. R. Ballard v. Gerrard.

S. C. 1 Salk. 333. Mich. 13. W. 3. B. R.

75. Motion for a Prohibition, *ſuggeſting*, That where there is *a Diſpute between a Peculiar, and the Prerogative Court, whether Bona Notabilia or Not*, it muſt be tried by the Common Law, and cited 1 Mod. 211. But per Cur. this muſt often have happened; And if a Prohibition lay, there muſt have been frequent Inſtances of it; *where a Prohibition is granted Pro Defectu Triationis, it is upon Suppoſition of different Rules eſtabliſhed* by the Spiritual and Common Law, as in caſe of Preſcription; But as to Bona Notabilia, the Spiritual and the Common Law are the ſame, and the Caſe quoted was not much regarded. 10 Mod. 272. Mich. 1 Geo. 1. B. R. Cottingham v. Loſts.

76. A Pariſh Clerk, choſen by the Parſon by Cuſtom, was libelled againſt *to deprive him for Drunkenneſs in Church* at the Time of Divine

Service, *and for Lewdneſs, and other Crimes* of the like Sort, which rendered him unfit for the Service of the ſaid Office. It was *ſuggeſted* for a Prohibition, *that thoſe Crimes are properly puniſhable by Indictment*, and ſo not cogniſable in the Spiritual Court, *nor can the Spiritual Court determine that the Party is guilty of Crimes triable by the Courſe of the Common Law, before he is convicted of them at Law*; But on the other Side it was ſaid, That in this Caſe the Pariſh Clerk being choſe by the Parſon his Office is Spiritual, and conſequently the Suit for a Deprivation is proper in the Spiritual Court, but admitted that it would be otherwiſe if the Suit had been to inflict a Corporal Puniſhment for thoſe Crimes, which are properly indictable, and that ſo was the Judgment in B. R. in the Caſe of **Townſend v. Thorpe.** Trin. 13 Geo. 1. where a Conſultation was awarded as to the Suit for Deprivation; But the Prohibition ſtood for ſo much of the Suit as went to puniſh the Crime itſelf; And the Caſe of **The Corporation of Carliſle** being mentioned to the Court where a Diſtinction was taken, viz. where the *Crime* was *againſt the Duty of the Party's Office*, as *Extortion in a Judicial Officer*, he might be proceeded againſt to a Deprivation or Removal before Conviction of ſuch Crime in a due Courſe of Law, otherwiſe not, which Difference was agreed by the Court; And thereupon the Motion was denied Quoad the Deprivation, that Matter having been ſolemnly ſettled in the Caſe of Townſend and Thorp aforeſaid. Gibb. 189. Hill. 4 Geo. 2. B. R. Newcomb. v. Higgs.

Fol. 288.

(G) For Seats in the Church.

The Diſpoſal of Seats in the Mother Church belongs to the Ordinary, and ſo of Seats *in a Chapel of Eaſe belonging to the Mother Church*; and to know whether it be a Church or not, is by knowing whether it has *Baptiſterium et Sepulturam.* 12 Mod. 228. Lee v. Daniel.

1. **THE Diſpoſing of the Seats** in Navi Eccleſiæ **belongs of Common Right to the** Ordinary **of the Dioceſe, ſo that he** may place and diſplace whomſoever he pleaſe.

12 Rep. 104. S. C. by Name of Corven's Caſe. — alias Corven v. Pym. — S. P. Cro. J. 366. Hill. 12 Jac in the Caſe of Frances v. Ley. —— But where a Libel was for a Seat in a Church, the Defendant ſurmiſed in C. B *That he and his Anceſtors have uſed Time out of Mind* &c. *to have an Iſle with a Seat* in the ſaid Church *for himſelf and Family*, and thereupon pray'd a Prohibition; But becauſe *it did appear upon Examination of the Party* himſelf, *That the* * *Pariſh* have *always uſed to repair the ſaid Iſle and Seat*, the Court would not grant a Prohibition; for that proves, That his Anceſtors were not the Founders of the ſaid Iſle and Seat. *Alſo another* Man hath always *uſed to ſit with him* in the ſaid Seat, which alſo proves, That it does not belong to him alone. Godb. 199. pl. 286. Trin. 10 Jac. C. B. Garven v. Pym. —— But otherwiſe for a Seat in an Iſle, a Man may preſcribe; becauſe it may be preſum'd, That his Anceſtor, or he whoſe Eſtate he has in the Houſe and Land in the Pariſh, had built the Iſle. Mo. 878. pl. 1232. Mich. 10 Jac. Pym v. Gorwin. —— 12 Rep. 104. **Corven's** Caſe accordingly, and that it ſhall be intended that ſuch Building the Iſle was done with the Aſſent of the Parſon, Patron, and Ordinary to the Intent to have it only to himſelf. —— S. C. 3 Inſt. 202. cap. 97. —— 2 Watſ. Comp. Inc. 8vo. 711. cap. 39. cites S. C.

2. **If a Man and his Anceſtors, and** all thoſe whoſe Eſtate he has **in a certain Meſſuage, have** uſed **Time whereof Memory &c.** to repair an Iſle in the Church, and to ſit in it and no other, **the Ordinary cannot diſplace him; for if he diſplaces him a Prohibition lies; becauſe he has it by** Preſcription **for a reaſonable Conſideration. M. 11 Ja. B. R. Per Curiam. M. 10 Ja. B. Per Curiam.** *Pimme's* **Caſe. Hobart's Reports 95.**

* If the Iſle has been uſed to be repaired at the Charge of all the Pariſh in Common, the Ordinary may there from Time to Time appoint whom he pleaſes to ſit there, notwithſtanding any Uſage to the contrary. Reſolv'd Per Cur. Cro. J. 366. Hill. 12 Jac. in the Star-Chamber. Frances v. Ley.

3. If

3. If a Man prescribes, That he and his Ancestors, and all those whose Estates they have in a certain Messuage, have used to sit in a certain Seat in Navi Ecclesiæ Time whereof Memory &c. in Consideration that he &c. have used Time whereof Memory &c. to repair the said Seat. If the Ordinary removes him from this Seat, a Prohibition lies; for the Ordinary has not any Power to dispose of it; for it is a good Prescription; and by Intendment there may be a good Consideration for the Commencement of this Prescription, tho' the Place where the Seat is be the Franktenement of the Parson. Tr. 12 Ja. B. *Crosse's* Case Resolved per Curiam, and a Prohibition granted to the Bishop of Exeter; for Crosse was a Parishioner of his Parish of Silverton. M. 13 Ja. B. between *Laugh* and *Hussey*. Resolved, and Prohibition granted and tried by Verdict. M. 13 Ja. B. between * *Boothby* and *Day* or *Baily*. Hobart's Reports 95. Same Case.

S.C. by Name of Hussey v. Leyton. 12 Rep. 105. Pasch. 10 Jac. in the Star-Chamber. Resolved accordingly. For if he hath it by Prescription, he has as good a Right in the Seat as he has in his House; but observe,

he *must claim it as belonging to his House*, and not otherwise; for properly it *belongs to the Manor-House*, if any Manor be, and *not to the Manor* which includes other Tenants, Farmers, and Inhabitants.

One can't prescribe for a Seat *in the Body of the Church*, but those are disposable by the Parson and Churchwardens; But for a Seat in *an Isle* he may. Mo. 878. Pym v. Gorwin. —— In a Prohibition the Question was, Whether a *Prescription to an Isle* in a Church *which he and all those &c. us'd to repair as belonging to a Manor where he had no Dwelling-House, but only Land*, were good? The Court inclin'd that it was not good, but order'd the Prohibition to go and Defendant to plead, that it come Judicially before them. 2 Mod. 283. Hill. 29 & 30 Car. 2. C. B. Shambrook v. Fettiplace.

A *Prescription* for a Seat in the Church *Ratione Messuagii* where he inhabits, is a Temporal Thing, and a Prohibition was granted. Noy 129. Anon.

A Libel was in the Bishop's Court of Exeter for a Seat, which the *Churchwardens* had *assigned to M.* in whose Right the Plaintiff claimed to sit there; The Defendants there *suggested* now for a Prohibition *a Prescription by a Que Estate* for the Seat, as being an ancient Seat and *belonging to their Tenement in W. and that they and all those &c. had used to repair it.* It was doubted, Whether this Prescription *in Navi Ecclesiæ* was good, but it were good in an Isle. The Court inclin'd that such Prescription in Navi Ecclesiæ may be *for special Cause*, *as* for *Repairing*, but they would not grant a Prohibition. 5 Mod 436. Pasch. 11 W. 3. Crook v. Sampson.

Where a Man has a Right by Prescription to a Seat in the Church, he may sue in the Spiritual Court *for quieting his Possession*, and may admit his Prescription to be try'd there as a Defendant does a *Modus or a Pension* by Prescription. 2 Salk. 551. Jacob v. Dallow. — 5 Mod. 436. Pasch. 11 W. 3. S.C.

* Hob. 69. pl. 79. S. C.

4. But if a Man prescribes to have a Seat in Navi Ecclesiæ generally, without the said Consideration of Repairing the Seat, yet the Ordinary may displace him. M. 11 Ja. B. R. Per Curiam. M. 13 Ja. B. between *Boothby* and *Day* or *Baily*. Hobart's Reports 95. S. C. Per Curiam.

12 Rep 105. Corven's Case. S. P. — *So of an Isle* in the Church, and constant sitting and burying there, without using to repair it, *gains no peculiar Property*. Cro. J. 366. Frances v. Ley. —— S. P. Noy 104. Day v. Bedingfield.

Reparation of a Seat ought to be given *in Evidence*, tho' it be not mentioned in the Declaration Sid. 205. Pasch. 16 Car. 2. B. R. in Case of Buxton v. Bateman.

5. The Ordinary hath nothing to do with the Seats in the Chapels annex'd to the Houses of Laymen, as of Nobles &c. Tr. Ja. 12 B. Agreed.

6. If a Layman, by the Dissolution of Monasteries, has a Monastery, in which is a Church, Parcel thereof, and he suffers the Parishioners by a long Time to come to it to hear Divine Service, and to use it as their Parish Church; This shall give Jurisdiction to the Ordinary to order the Seats, because now in Fact this is a Parish Church, tho' before it was not subject to the Ordinary. Tr. 12 Ja. B. *Buzzard's* Case held.

See pl 8.

7. If there be a Custom in a Parish, That 12 of the Parishioners may elect Churchwardens, the which Curchwardens have Power by the Custom to repair the ancient Seats, to erect New in Navi Ecclesiæ, and appoint what Persons shall sit in them. And the Churchwardens so elected erect a New Seat in Navi Ecclesiæ, and appoint a certain Man to sit there, and after the Ordinary decrees, That another shall have the

Poph. 140. S. C. by the Name of Brabin v. Tradum, and a Prohibition was granted, be-

cause this Grant to One and his Heirs is not good; for * Fol. 289. the Seat belongs not to the Person but to the

the Seat, a Prohibition lies; for the Custom has fixed the Power of the Disposing of the Seats to the Churchwardens. P. 16 Ja. B. R. between *Brabin* and *Tredennick*, for a Seat in the Church of Breock in Cornwall. Resolved, and Prohibition granted. But it was also partly granted because the Sentence of the Ordinary was, That Tredenham should have the Seat * to him and his Heirs, and that none should disturb him under the Pain of the greater Excommunication, which is unreasonable; And by this Sentence he and his Heirs shall have it, tho' they be not Inhabitants within the Parish.

House; and should it be otherwise, then when the Person leaves this Place and dwells in another he might retain the Seat, which is not reasonable.

It was suggested for a Prohibition, That *Time out of Mind the Parishioners, at their own Charge, had repair'd all the Seats in the Church*, and that by reason thereof they had been Time out of Mind disposed of by the Churchwardens, but that the Bishop had now taken upon him the Disposal of the Seats; And for the Plaintiff was cited this Case of Tredennick. Jones J. said, That De Communi Jure the Ordinary has the Disposal of the Seats, and De Communi Jure the Parishioners ought to repair them, and so nothing appears here to oust the Ordinary of his Jurisdiction; for they have only said, That the Parishioners have repaired at the Charge of the Parish, which is no more than what is their Duty to do, and for which they have the Easement of sitting in them, tho' by the Disposition of the Ordinary; whereupon the Prohibition was deny'd by the whole Court. 2 Lev. 241. Hill. 30 & 31 Car. 2. B. R. Greaterchy v. Beardsley. —— Raym. 246. S. P. in the same Term in C. B. **Langley** v. **Chute**, where the Case was, as appear'd by the Libel, That *one* B. being *seised of Land* in Stretham, in 1611. *built a House* upon it *and a Pew* in the Church *at his own Cost* in 1637, *for himself and his Family*, and afterwards sold House and Pew to Chute the Defendant and his Heirs; and *the Ordinary by Sentence in the Ecclesiastical Court annex'd the Pew to the said House*. Notwithstanding which the Churchwardens would have plac'd the Plaintiff in the said Seat. But by the Ch. J. & 2 J. a Prohibition was deny'd; And the Ch. J. said, That if such Suggestion should hold, the Ordinary's Jurisdiction would be totally set aside; But Atkins J. held that a Prohibition lay, because this Case did not differ from the Case of Brabin. And North Ch. J. observ'd, That in the Principal Case the Defendant claim'd only for himself and Family, whereas *had he claim'd for him and his Heirs*, he seems to admit, That *a Prohibition would lie*.

A Prohibition was pray'd to the Spiritual Court, where the *Parishioners prescribed to dispose of the Pews exclusive of the Ordinary*. But per Cur. that cannot be; And the Ordinary's not acting might be, because there was no Occasion for his intermeddling; but that cannot vest the Right in the Churchwardens, who are only a Corporation capable of Goods, but not of Inheritance; Sed Adjornatur. 1 Salk 167. Hill. 3 Annæ. B. R. Presgrave v. Churchwardens of Shrewsbury.

Watf. Comp. Inc. 8vo. 713. cap 39. cites S. C.

8. If a Layman, by the Dissolution of Monasteries, has a Monastery, in which is a Church, Parcel of it, and he suffers the Parishioners about 60 Years to come there and hear Divine Service, and he himself has used by all that Time to have the Placing of Men there in the Seats, the Ordinary cannot displace them, because the said Patron had used by all the Time that it had been used for the Parish Church, to have the Placing in the Seats. Cr. 12 Ja. B. *Buzard's* Case.

See pl. 6.

9. A *Foreigner*, tho' occupying Lands in the Parish, shall not be *tax'd for Reparations* of Seats in the Church, because he has no Benefit by them in particular. Per Omnes. 2 Brownl. 10. in the Case of Glover v. Wendham.

Palm. 424. S. R. Carleton v. Hutton. — Noy 78. S C. — All Controversies concerning Seats in a Church are determinable before the Ordinary, except where one *claims a Seat by Prescription*. Per Cur. 12 Mod. 401. Pasch. 12 W. 3. B. R. Anon.

10. When *Prescription* for a Seat in a Church, and *Priority there* also is claimed by Prescription, it is *triable in* this Court *(of B. R.) by an Action on the Case*, and not in the Spiritual Court. Per Cur. Agreed. Lat. 116. Pasch. 2 Car. in Hutton's Case.

11. It was suggested for a Prohibition, That within such a Parish there is such a *Custom that the Inhabitants of such* and such *ancient Tenements have sat in the first Seat of such an Isle*, that the Bishop removed them, and gave Licence to others to sit there; and because they went to *try the Custom* in the Spiritual Court, he pray'd Prohibition inasmuch as it is an Idle Custom; and that where Courts held Plea for an Idle Custom, they should be prohibited, and cited the Case of **Topsall** and **Ferrers**. Hob. 175. But 'twas deny'd; and Pemberton Ch. J. said, That here besides Custom, the Court has *Conusance of the Matter*, Placing and Displacing being in the Ordinary, so that if the Custom were out

of

of the Caſe, yet they might proceed; but in **Topſall's** Caſe they proceeded only upon the Cuſtom, which being a *vain unreaſonable* one, they were prohibited. Skin. 7. Mich. 33 Car. 2. B. R. Anon.

12. The Plaintiff brought an Action of the Caſe, and declar'd, That he was *ſeiſed of* 3 Seats in ſuch a Part of the Church, belonging to an ancient Meſſuage, and that the Defendant diſturbed him &c. Exception was taken, 1ſt, For that he *ſhews not, That he hath repaired* theſe Seats; This was held a good Exception, and that he ought as well to ſhew it in an Action Sur Caſe as upon a Prohibition. 2dly, For that he preſcribes that he was ſeiſed of 3 Seats *appertaining to an Houſe*, whereas he ought to ſay, Of an *Houſe, to which the Seats were appertaining*. And it was ſaid in this Caſe, That the Freehold of a Seat may be in One, tho' all the Church beſides be in the Parſon; becauſe Churches are of Lay Foundation, and the Patron might at firſt except it; But this ſhall *not be intended unleſs ſpecially ſhewn*. Skin. 34. Hill 33 & 34 Car. 2. B. R. Freem v. Dane.

13. Bill *to quiet one in the Poſſeſſion of an Iſle in the Church*, the Plaintiff having obtained a Decree before the Ordinary, was diſmiſs'd with Coſts; For this Court executes not their own Decrees by a Bill without examining the Juſtice thereof, but we can't examine if the Biſhop has done Right, nor will ſuch a Decree bind his Succeſſors. 2 Vern. 226. Paſch. 1691. Baker v. Child.

14. The *Churchwardens* of Ludlow were libell'd againſt for *pulling down Seats* between ſuch and ſuch Iſles of the Church, and anciently belonging to the Lord Preſident of Wales &c. *without Leave of the Biſhop, and for erecting new Seats* there, *and placing People therein after Admonition* &c. The Plaintiffs *ſuggeſt* for a Prohibition the Statute of Magna Charta, That no Man ſhall be diſſeiſed of his Freehold &c. That all Cuſtoms and Preſcriptions ought to be tried at Common Law, *That* in the Pariſh of Ludlow *the Churchwardens, by the Conſent of the Pariſhioners &c. have uſed* to diſpoſe of Seats in the Church &c. That they had diſpoſed of certain Seats to the Bailiffs of Ludlow, which being ruinous, the Plaintiffs, by the Command of the ſaid Bailiffs, pulled down, and erected new Seats in the Place of the old ones, notwithſtanding which, the Defendant cited them into the Spiritual Court &c. A Prohibition was granted. 2 Lutw. 1032 & 1037. Mich. 4 W. & M. Colebatch v. Baldwyn.

15. Preſcription for a Pew in a Church by Reaſon of his Houſe; Affidavits were made, That he was *not*, nor is an *Inhabitant* there; This is not ſufficient, for *Poſſeſſion only* is enough without living there. 12 Mod. 40. Paſch. 5 W. & M. B. R. Anon.

16. It was ſaid that anciently there were no Pews in Churches, but only Forms, and that it had been a *good Preſcription* to ſay that Time out of Mind the *Corporation did repair* ſuch an Iſle in the Church, Ratione cujus the *Mayor and Aldermen ſat there*; for tho' the Right be in the whole Body, the Enjoyment may be and enure to a ſelect Number. 6 Mod. 231. Mich. 3 Ann. B. R. in Caſe of Jacob v. Dallow.

17. A Libel was *for two Seats in the Pariſh-Church* of King's Norton; the *Defendant pleaded* that ſhe was in *Poſſeſſion of two Ancient Meſſuages to which* thoſe Seats belonged; which Plea being rejected by that Court, the Plaintiff now moved for a Prohibition, which was oppoſed, for that the *Church was New built* by the Pariſhioners; and for that Reaſon there could be no Preſcription to the Seats, but that they were in the Gift of the Biſhop ſo; a Conſultation was prayed. The Plea tendered by the Defendant was ſuch as could not be tried in the Spiritual Court, becauſe they cannot hold Plea of the Inheritance of the Seats, nor of any Thing which concerns the Freehold; ſo the Prohibition muſt ſtand. 8 Mod. 338. Mich. 11 Geo. 1725. Swetnam v. Archer.

(H.) Jurisdiction. *Reparation.* [*Of the Church.*]

1. THE Ecclesiastical Court has Conusance of the Reparation Navis Ecclesiæ. Co. 5. *Jefferies* Case 67. Resolved.

2. If a Man continues, and inhabits in one Parish, and has Land in another Parish which he himself occupies there, he shall be charged for this Land to the Reparation of the Church of the Parish in which the Land lies; because he may come there when he will, and he is to be charged in Respect of the Land. Co. 5. *Jeffrey* 67. Resolved. Tr. 11. Ja. B. *Andrews's* Case; per Curiam. Contra M. 40. 41. El. B. R. per Curiam.

A Libel was *for not paying to the Repairs of the Church, and for Books and Vestments*, within which Parish he had *Lands in his Hands, but was not an Inhabitant, nor had any House therein.* And this being suggested for a Prohibition, Popham was at first of Opinion that it was not good, because such as do not inhabit within the Parish have no Benefit of the Divine Service there. But upon shewing the Precedent of this Case of Jeffries v. Foster, and to the Opinion of which Case all the Justices here agreed, Popham chang'd his Opinion. Cro. E. 659. Pasch. 41 Eliz. B. R. Paget v. Crompton,——S. P. resolv'd as to the having Lands in a Vill, and not inhabiting there. Cro. E. 843. pl. 24. Trin. 43 Eliz. C. B. Stephenson v. Case.——*But* in a Prohibition in B. R. it was held, That no Man should be charged for his Land to contribute to the *Church Reckonings*, if he doth *not dwell in the same Parish*, or unless he consents thereto. Mo. 554. pl. 749. Penner v. Crompton.

But Pasch. 8 Jac. it was resolved by the whole Court, That for and towards the Reparation of a Church, the *Land of all, as well* of *Foreigners there inhabiting, as* of *all others*, is liable thereunto; and this is so by the general Custom of the Place, and this is *to be raised by a Rate imposed according to the Value of the Land*, and that in the Nature of a Fifteenth; and this is not meerly in the Realty. And by Williams and Yelverton Justices, and Fleming Ch. J. it is not the Land but *the Person of him who occupieth the Land* is to be charged. Per Yelverton J. A Man is chargeable for Reparations of a Church by Reason of the Land, and for the Ornaments in the Church by Reason of his coming to Church. And per Williams J. and Fleming Ch. J. If the Party have Land there, he is chargeable for both, whether he comes to Church or not; for that he may come to Church if he please. 1 Bulst. 20. in an Anonymous Case.——S. P. 2 Roll. Rep. 262. Mich. 20 Jac. in Wilmore's Case.

S. C. and P. cited and agreed by the Justices, and thereupon Popham Ch. J. chang'd his former Opinion, in the Case of Paget v. Crompton. Cro. E. 659.——

3. But if an Inhabitant of a Parish leases his Land which he has in another Parish, reserving a Rent, he shall not be charged where the Land is in Respect of the Rent; because there is a Parishioner and Inhabitant who may be charged. Co. 5. *Jeffery* 67. b. Resolved. M. 5 Ja. B.

When there is a Farmer of Land, he shall not be charged alone; for there is no Reason that a poor Husbandman that pays Rent for his Land, and perhaps to the utmost Value, shall build Churches; but as it may be unknown to the Parishioner and Churchwardens who has the Fee in Reversion, they may for that Reason impose all the Tax upon the Farmer, and he by Way of Answer may say in the Spiritual Court that he is Farmer; and thereupon the Tax shall be divided between him and his Landlord, according to the Rate that his Land is of greater Value than the Rent, and upon the Landlord according to the Quantity of the Rent, Quod non fuit dedictum. Quære; for in Jeffrie's Case, 5 Rep. it is resolv'd, That the Farmer only is chargeable, and that Consultation was granted, but not for this Reason, but because the Reversioner had pleaded an insufficient Plea in the Spiritual Court, viz. That he was not an Inhabitant &c. which was not a good Plea, and also for the *great Delay which he had used*, having brought two Appeals, and after a Prohibition, *and so had put the Parish to 60 l. Expence for the Recovery of 6 l.* and for this Reason principally, and *not upon the Matter in Law, was the Consultation awarded*; for he had surceas'd his Time. 2 Roll. Rep. 270. Hill. 20 Jac. B. R. The Churchwardens of ....——In such Case the Tenant must be charged, and not the Owner, and the suggesting that the Lands were in the Occupation of the Tenant, and that himself did not inhabit there, is a good Suggestion for a Prohibition. 4 Mod. 148. Trin. 4 W. & M. B. R. Anon.

4. A Man cannot be charged, in the Parish where he inhabits, for Land which he has in another Parish, to the Reparation of the Church; because then he may be twice charged; for he may be charged for it in the Parish where the Land lies. P. 16 Ja. B. R. Sir *H. Butler* against Resolved, and Prohibition granted. Co. 5. *Jeffrey* 67.

5. If

5. If a Petit Chapman takes a Standing for a Rent in the Walls of Manor within the Market for 2 or 3 Hours every Market-day, to ſell his Commodities, the Market being held there one Day every Week, but he inhabits in another Pariſh, he cannot be rated to the Reparation of the Church for this Standing. M. 20 Ja. B. R. between *Hollynes* and the Churchwardens of *Kettering* in Northamptonſhire; Reſolved, and Prohibition granted accordingly.

S. P. 4 Mod. 148. Trin. 4 W. & M. B. R. in an Anouymous Caſe.

6. If a Citizen of London erects a Houſe in the Pariſh of A. to dwell there in the Time of the Sickneſs in London, and has not any Land in the Pariſh, and after he is aſſeſs'd 20 s. for the Reparation of the Church, where others who have 100 Acres of Land in the ſame Pariſh pay but 6 d. yet no Prohibition ſhall be granted upon Suit for the 20 s. in Court Chriſtian, becauſe they have Juriſdiction of the Thing; and therefore may order it according to their Law. M. 5 Ja. B. Sir *Robert Lee's* Caſe, per Curiam.

The *Miſ-rating* of Lands for Reparations, is no Cauſe of Prohibition. 2 Roll R. 463.—*But* quære upon a *Cuſtom* in the Pariſh, *that the Pariſhioners ought to be rated according to the Value of their Sheep-walks, and not of their Farms or Houſes.* 2 Roll. R. 463.

7. If there be a Chapel of Eaſe in a Pariſh, and ſome Part of the Pariſh have uſed Time whereof Memory &c. alone, without others of the Pariſhioners, to repair the Chapel of Eaſe, and there to hear Service, and marry, and do all other Things, but only they bury at the Mother Church, yet they ſhall not be diſcharged of the Reparation of the Mother Church, but ought to contribute to it; for the Chapel was ordained only for their Eaſe. M. 13 Ja. B. between the Wardens of *Aſhton* and the Inhabitants of *Caſtle Bromage*. Hobart's Reports 91.

A Libel was againſt the Inhabitants of B. a Vill in the Pariſh of A. *for the Repairs of the Parochial Church.* B. *ſuggeſted that they had in B. a Chapel Parochial and Parochial Rites, and* that they *repair their own Chapel, and* that *Ratione inde Time out of Mind they have been diſcharg'd of the Repair of the Parochial Church of A.* The Court granted a Prohibition, and ordered the Plaintiffs to declare, who declar'd *that they had* in B. a Chapel Parochial or Church of B. within the Pariſh of A. where Time out of Mind have been a Body of a Church, Chancel, *Bells, and all other Parochial Trophies*, and *Divine Service and Sacraments*, and a *diſtinct Perambulation* of B. and A. ſeverally. And that the Inhabitants of B. *never went to the Church of A. nor have they any Seats there*, and that they have diſtinct Churchwardens; and *make no other Uſe of the Church or Churchyard of B. but for Burial only*, and that Time out of Mind they have repaired their Parochial Chapel of B. and the Inhabitants of A. have been exempted from that Charge, and Ratione inde the Inhabitants of B. have Time out of Mind been diſcharged from repairing the Church of A. and yet have the Defendants libell'd againſt them to repair it &c. The Defendants demurr'd; it was inſiſted for the Plaintiff. 1ſt. That a Preſcription generally, without ſhewing any Cauſe to exempt them from Repair of the Pariſh Church, is not good; for of common Right every Pariſhioner is liable to it. 2dly. As to what is ſaid, that they repair their own Parochial Chapel, that cannot be a ſufficient Cauſe, becauſe it is for their own Eaſe; and therefore cannot diſcharge them from what they are liable to of common Right. 3dly. If there is any ſuch Cuſtom, it might be pleaded in the Spiritual Court; and this by the expreſs Words of the Statute Circumſpecte agatis, viz. De Eccleſia diſcooperta vel Cœmiterio non clauſo non jacet Prohibitio. It was admitted on the other Side, That a general Preſcription to be diſcharged from Repairing &c. is not good; but here is a good Cauſe ſhewed, (viz.) Want of Seats in the Parochial Church, and not going thither, unleſs to bury; and this might have a reaſonable Commencement, as by an Agreement upon the multiplying the Houſes in the Pariſh, and its growing more populous; Beſides, Here is a Cuſtom alleg'd; and tho' the Repairs of Churches is expreſsly within the Statute Circumſpecte agatis, yet when a Cuſtom is in Queſtion, it is a Temporal Matter, and muſt be tried in the Temporal Courts, becauſe their Law and the Common Law differ in the Eſſence of Cuſtoms; and the Court was of this Opinion, ſo adjudged that Prohibition lies. And the Court adviſed the Defendant to take Iſſue upon the Cuſtom. 2 Lev. 186. Hill. 28 & 29 Car. 2. B. R. Wiſe v. Creeke.

8. So in the ſaid Caſe, if the Inhabitants, who uſe to repair the Chapel, preſcribe that they Time whereof Memory &c. have us'd to repair the Chapel, and Ratione inde have been diſcharged of the Reparation of the Mother Church, yet this ſhall not diſcharge them of the Reparation of the Mother Church; becauſe it is not any direct Preſcription to be diſcharged, but it is Ratione inde; ſcilicet, of the Reparation of the Chapel. M. 13 Ja. B. in the ſaid Caſe of *Aſhton*.

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Libel was *for Repairs of the Church and Bells.* It was *ſuggeſted* for a Prohibition, *That they are a Parochial Chapel in another Pariſh, and that the Inhabitants of the Chapelry have Time out of Mind had a Parochial Chapel, and Divine Service and Sacraments* &c. *and have uſed to be exempted* from the Repair of the Parochial Church, Bells &c. *in Conſideration that they have been charged to the Repair of their own*

own Chapel, and that they have repaired the ſame &c. And the Prohibition was granted. 2 Lev. 102. Paſch 26 Car. 2. B. R. Brown v. Palfry.——3 Keb. 286. 325. S. C.———By Reaſon of Repairing a Chapel of Eaſe, that he had been Time out of Mind exempted from contributing towards the Repairs of the Church, was held a good Preſcription. Freem. Rep. 468. pl 644. Trin. 1678. Wiſe v. Green.

A Prohibition was moved for. The *Libel* was *for Rates towards the Repair of a Church*; it was *ſuggeſted that they had us'd to repair a Chapel a Tempore cujus* &c. but foraſmuch as they had not *alleged it to be a Chapel that had all Parochial Rites* the Prohibition was denied; for if but *one is omitted* (as Burial) no Prohibition ſhall go, and therefore they were adviſed to amend the Suggeſtion. Comb. 132. Trin. 1 W. & M. in B. R. Huſley v. Caſſock.

9. If the Chapel be 3 Miles diſtant from the Mother Church, and the Inhabitants who us'd to come to the Chapel have us'd always to repair the Chapel, and marry and bury there, and never within 60 Years were charg'd to repair the Mother Church, yet this is not any Cauſe to have Prohibition, but they ought to ſhew in the Spiritual Court their Exemption, if they have any, upon the Endowment. Hill. 8 Car. B. R. Per Curiam, Prohibition denied, it being moved by Mr. South.

See (K.) pl. 3. contra.

10. If a Man be ſued in the Spiritual Court for Reparation of the Church, no Prohibition ſhall be granted upon a Surmiſe that other Perſons have Land within the Pariſh, who ought to be charged with the Reparation of the Church as well as himſelf, and are not charged with it; for if this be true, it is a good Plea there, and if they do not allow it he ought to appeal. Tr. 9 Car. B. R. between Per Curiam, and Prohibition denied accordingly.

See pl. 7 and 8 in the Notes.

11. If the Men inhabiting in a Chapelry preſcribe to be diſcharged Time whereof Memory of the Reparation of the Mother Church, and they are ſued for Reparation of the Mother Church, a Prohibition lies upon this Surmiſe. Hobart's Reports 92.

13. A Libel was for a Rate *for Repairing the Church*. The Defendant *ſuggeſted*, 1ſt. *That his Lands were over-valu'd*, viz. 100 l. per Annum. when they were worth but 60 l. 2dly. That there was a Cuſtom in the Pariſh *that they ought* not *to be rated* after the Value of their Houſes and Lands, but *only according to* the Value of *their Sheep*-Walks. As to the firſt, all the Court except Whitlock reſolv'd, that the Rates ought to be according to the Value of their Lands; and therefore the Valuation thereof properly belongs to themſelves; and the Church being the Houſe of God, a Cuſtom in Prejudice of the Repairs thereof is void, for of common Right Houſes and all Lands are chargeable to it. And the Court ordered him to ſuggeſt the Cuſtom, and omit the Value, and then they would conſider whether a Prohibition ſhould go. 2 Roll. R. 463. Mich. 22 Jac. B. R. Holland v. Kirton.

13. It was ſuggeſted for a Prohibition, That there was a Cuſtom in the Pariſh that the Pariſhioners ſhould be *rated* towards Repair of the Church, ſo that ſuch Tax be *in Proportion to the Tax Pro Domino Rege*; and that the Tax there for his Lands to the King was *but 2 s.* and yet he was rated to the Church *5 s.* Per Cur. This a Spiritual Matter, and ought to be tried in the Spiritual Court. And ſo a Prohibition denied; but if any Thing is offered in Proof, which is allowable by our Law, and they will not allow of it, in ſuch Caſe a Prohibition ſhall go. Beſides, it is *not ſhewn what Sort of Tax this Tax Pro Domino Rege*, which he mentions, *is*; but it is utterly uncertain. And afterwards a Conſultation was awarded by the whole Court. Lat. 217. Paſch. 3 Car. Longmore v. Churchyard.

S. P. and ſeems to be S. C. Mod. 236. pl. 2. Anon. And there it is ſaid, That in Caſe of a

14. In a Prohibition it was the Opinion of the whole Court, That if a *Church* be *ſo much out of Repair*, *that it is neceſſary to pull it down*, and that it cannot be otherwiſe repaired, then, *upon a General Warning* given to the Pariſhioners, *the major Part* of the Pariſhioners then meeting according to ſuch Notice *may make a Rate for* pulling down of the Church, and *Building of it* upon the old Foundation, and for making of Vaults where neceſſary (as they were in this Church, by reaſon of the Spring-

ing

ing Water) And though the Rate be higher than the Money paid for doing all this, yet it is good, and the Churchwardens are chargeable for the Overplus, they not being able to compute to a Shilling. And that if any of the Parishioners refuse to pay their Proportion according to the Rate, they may be libelled against in the Spiritual Court; and if the *Libel alleges the Rate to be Pro Reparatione Ecclesiæ generally*, tho' in Strictness *Ecclesia* contains both the Body and Chancel of the Church, yet by the Opinion both of the Court of C. B. and of the Exchequer, it *shall be intended*, that the Rate was only for *the Body of the Church*; But in this Case it was made appear clearly, that the Rate was only for the Body, and that the Minister was at the Charge of the Chancel. And both Courts agreed, That when a Prohibition is moved and desired, on Purpose to stop so good a Work as the Building a Church, the *Court will not compel the Parties to take Issue upon the Suggestion*, when upon Examination they find it to be false, and therefore will not grant a Prohibition; For if the Rate be unduly imposed, the Party grieved hath a Remedy in the Spiritual Court, or may appeal if there be a Sentence against him. Afterwards the Court of B. R. was moved for a Prohibition in this Case, and it was denied. So that in this Case there was the Opinion of all the 3 Courts. 2 Mod. 222, 223. Pasch. 29 Car. 2. in Scacc. St. Mary Magdalen Bermondsey Church in Southwark.

Church's being so much out of Repair, the Bishop's Court must proceed against the whole Parish to have it repaired; And that if a Church be down, and the *Parish increased, so that of Necessity they must have a larger Church*, the Major Part of the Parish may raise a Tax for the enlarging it, as well as the Repairing it, and that the Consent of every Parishioner is not necessary.

15. A *Libel* was in the Ecclesiastical Court of Hereford *against the Parson Impropriate, to repair the Chancel* of Bradwarden. Upon a *Suggestion, That one J. S. had a Seat there Time out of Mind* for him and his Family, and Privilege of Burial there, *and that he Time out of Mind had used to repair* the Chancel, a Prohibition was granted, because this is a Prescription triable at Common Law. Freem. Rep. 300. pl. 360. Trin. 1681. C. B. Anon.

16. The Plaintiff being *sued* in the Ecclesiastical Court *for Repairs of the Church suggested, That he had built an Isle, and repaired it at his own Charges*, and moved for a Prohibition. Cur. unless it be suggested, That he sits in the Isle, and *hath no Benefit of the Navis Ecclesiæ*, there is no Cause for a Prohibition, for a Man may build an Isle for his Conveniency. Freem. Rep. 301. pl. 363. Trin. 1681. C. B. Weeks v. Oxenden.

17. Prohibition was prayed to the Consistory Court of London, because Suit there was against the Master and Wardens of the Company of ----- for a Tax imposed upon the Hall of the said Company for the Repair of the Parish Church; And it was said that the Tax is not imposed upon them in their Natural Capacity, but upon the Lands of the Body Politick. Per Cur. a Prohibition shall not issue; For the *Land of* the *Company* are *chargeable to* the *Repairs*, and the Spiritual Court (who has the Conusance of the Matter) has no other Process than Citation, which cannot be executed upon an Aggregate Corporation, which is not visible in Law; Ergo the *Citation* of Necessity *ought to issue against the Officers of the Corporation*, to whom it belongs to pay the Tax, and Allowance may be made to them upon their Account. 2 Jo. 187. Hill. 33 & 34 Car. 2. B. R. Thursfield v. Jones.

18. Libel was, That the *Church and Chancel* of D. *were out of Repair*, and that the *Churchwardens made a Rate* upon the Inhabitants *for the Reparation of Both*, and that they accordingly had *repaired Both, and beautified the same with Ornaments.* It was *suggested* for a Prohibition, That of Common Right the Chancel should be repaired at the sole Charge of the Parson; And *that Rates for Repair of a Parish Church should be made by the Parishioners, or the Major Part* of them, *and not by the* * *Churchwardens alone.* And by Holt Ch. J. by the Civil and Canon Law the Parson is obliged to repair the whole Church, and it is so in all Christian Kingdoms but in England; For it is by the peculiar Law of this Nation, that

12 Mod. 83. S. C. by Name of Price v. Rouse. — Salk. 165. S. C. by Name of Pierce v. Prouse —— 5 Mod. 389. Hawkins's Case, and there the

Libel ſet forth an ancient Cuſtom in the ſaid Pariſh, That the Adorning the Inſide of the Chancel had been done by the Churchwardens at the Charge of the Owners and Occupiers of Houſes within the Pariſh by a Rate to be made with the Conſent of the Major Part of the Pariſhoners having Reſpect to the annual Value of the Houſes, That the Chancel wanted Reparations and Ornaments, and that the Churchwardens with Conſent &c. made a Rate confirmed by the biſhop, whereby the *Defendant was rated* 17 *l.* 1 *s. for Mills and Racks*, within the ſaid Pariſh, which was his due Proportion according to the yearly Value of the Houſes there, and that he had not paid the ſame. The Defendant denied the Cuſtom, which was found for the Plaintiff, but for the Defendant it was found, That the Rate was not made by the Major Part of Pariſhioners. Per Curiam, *without a ſpecial Cuſtom the Pariſhioners are not to repair the Chancel*; the Parſon is bound to do it of common Right, but *where a Temporal Inheritance is to be charged by a particular Cuſtom, the Churchwardens muſt bring the Defendant within the Cuſtom*, otherwiſe it is not good; For it is the Cuſtom that gives the Juriſdiction; Now in this Caſe the Cuſtom was alleged for Owners of Houſes to repair, and they have rated the Defendant, as Owner of a Mill, which cannot be intended a Houſe; For in a Præcipe quod reddat, a Mill cannot be demanded by the Name of Domus, but it muſt be De Moſendino. Adjournatur.

* Libel was againſt the Pariſh for not paying a Rate made by the Churchwardens only, and this being ſuggeſted for a Prohibition, and that by the Law the Major Part of the Pariſh muſt join; It was ſaid by Twiſden J. that perhaps *no more of the Pariſh would come together*; To which it was ſaid by the Counſel for the Prohibition, That if that did appear it would be ſomething. Mod. 79. Mich. 22 Car. 2. B. R. Anon —— S. P. per Cur. Vent. 367. Trin. 35 Car. B. R. Thurſfield v. Jones

The Spiritual Court may compel the Pariſhioners to repair their Pariſh Church if out of Repair, and may *excommunicate every one till it be repaired*, and ſuch as are willing to contribute muſt be abſolved till the greater Part of them agree to aſſeſs a Tax, but the Court cannot aſſeſs them towards it; Per North Ch. J. to which the others agreed, And that the Churchwardens cannot; For none but a Parliament can impoſe a Tax; but the greater Part of the Pariſh may make a By-Law, and to this Purpoſe they are a Corporation; *But if a Tax be illegally impoſed*, as by a † *Commiſſion from the Biſhop* to the Parſon and ſome of the Pariſhioners to aſſeſs a Tax, yet if it *be aſſented to, and confirmed by the major Part of the Pariſhioners*, they in the Spiritual Court may excommunicate ſuch as refuſe to pay it. Mod. 194. Hill. 26 & 27 Car. 2. C. B. pl 25. Rogers v. Davenant. ——S. P. And † a Prohibition was granted to a Libel for a Tax made by ſome Pariſhioners by virtue of a Commiſſion from Dr. Exton the Chancellor of London, becauſe that Way of Taxation by Commiſſioners is againſt Law; And though the Spiritual Court may compel the Pariſhioners to make a Tax, yet they cannot conſtitute Commiſſioners to make one. Freem. Rep. 286, pl. 330. Hill. 1674. Anon. but ſeems to be S C. — S. P. 2 Mod. 223. Paſch. 29 Car. 2. in the Exchequer by North Ch. J. ſaid it had been lately ruled ſo in C. B. —— S. P. by Holt Ch. J. 12 Mod. 328. Mich. 12 W. 3. and that the Spiritual Court may excommunicate for not meeting and making a Rate; And that though one, who ſues in the Spiritual Court, *omits in his Libel any Matter which would make againſt him*, as was done in the principal Caſe there, viz. That the Rate was made by the Commiſſioners of the Eccleſiaſtical Court, yet *they of the other Side may ſuggeſt it*.

* Noy. 131. Heale v. the Churchwardens of Hobleton. † This is miſprinted, and ſhould be 136. and is Chambers's Caſe. It was agreed in both the Caſes that ſuch Rate is not good to bind the Inheritance; But it was ſaid in the firſt Caſe that it is good by way of Direction How and How Much ſhall be levied.

19. *Libel*, in the Spiritual Court *for not paying a Pariſh Rate for Repairs* of the Church, and ſuggeſted for a Prohibition, that all Pariſh Rates were to be by *Majority of Pariſhioners*; and that every Rate, after it is collected, becomes void; and that this Rate was not by a Majority &c. and that the Suit was to pay this in Purſuance of an *old Rate collected many Years before*. Per Holt, here the Suggeſtion recites an antient Rate, which they ſay was to be a Standing Order for all Times to come; And that they have confirmed that Rate, and that the Libel is for Want of a New Payment according to it, and cited Noy. *131. † 126. in Point, for a Prohibition in this Caſe, and ſaid, That all, that the Spiritual Court can do, is to *make an Order* that the Church be repaired *but not to Aſſeſs a Quantum*. A Prohibition was granted. 12. Mod. 327, 328. Mich. 11. W. 3. Blank v. Newcomb.

(I) Reparation [*Chapel of Eaſe.*]

1. IF there be a Parochial Church, and a Chapel of Eaſe in the the ſame Pariſh, and the Chapel of Eaſe had Time whereof Memory all Spiritual Rites except Burial and this has uſed to be done in the Church Parochial, and becauſe they who have uſed to go to the Chapel of Eaſe, have uſed Time out out of Mind to repair a Part of the Wall of the Chnrchyard of the Parochial Church, and in conſideration thereof, and becauſe thoſe who are of the Chapel of Eaſe have uſed Time out of Mind to repair the Chapel of Eaſe at their own Coſts they have been Time out of Mind diſcharged of the Reparation of the Parochial Church. This is a good Preſcription, and there if they are ſued in the Spiritual Court to repair the Parochial Church, a Prohibition lies. Tr. 15. Ja. B. R. between the Inhabitants the Pariſh of *Stratford*, and the Inhabitants of the Chapel of Eaſe of *Luddington*, Prohibition granted, and then was ſhewn a Precedent. P. 44. El. Rot. 417. between *Marſhall and Aſhley*. Prohibition granted for the Chapel called *Deusford* againſt the Pariſh called *Ringſtead*.

See (H) pl. 7, 8. Noy 41. Churchwarden of Denford's Caſe, and reports, that by the better Opinion of the Court the Preſcription was not good; for the Eaſe of ſome ſhall not be a Diſ-eaſe to the reſt of the Pariſhioners; for Popham ſaid, That the *Aſſent is not requiſite to build a Chapel of Eaſe*; and then the Ordinary and the Pariſh cannot charge the Pariſhioners with greater Charge, yet now it was order'd that a Prohibition be granted, and that Defendants, if they pleaſe, might demur upon it. And cites 5 Jac. B R a Derbyſhire Caſe, where a Prohibition in ſuch Caſes was denied

Tho' a Man &c. Time out of Mind has repaired a Chapel, yet if it be not a *Predial Chapel*, having Chapel-Wardens belonging to it, 'tis no Reaſon to exempt him from a Church-Rate to repair; and if he repairs *leſs than his Proportion*, it may be a Queſtion, If it ought to diſcharge him. Per Holt. 1 Salk. 122. Hill. 1 Ann. B. R. Anon.

2. If a Capel of Eaſe has uſed a Tempore &c. to have all Sacraments except Burial, and the Inhabitants within the Chapel, alſo always have repaired the Chapel, and preſcribe in Conſideration of 3 s. and 4 d. per Annum, paid for Reparation of the Mother Church to be diſcharged of the Reparation of the Mother Church. If the Inhabitants of the Chapel are ſued for Reparation of the Mother Church a Prohibition lies upon this Modus. P. 11. Car. B. R. between *Penneland and Toye* Prohibition granted. *Gooſey* was the Chapel, and *Standford* the Mother Church in the County of Berks. Tr. 11. Car. B. R. in the ſame Caſe the Prohibition confirmed, and ordered to be tried at the next Aſſiſes. But Mich. 11 Car. A Conſultation was granted in this Caſe, becauſe the Prohibition was granted after Sentence in the Spiritual Court that there was not any ſuch Cuſtom

3. The Inhabitants of a *Chapelry, within a Pariſh* were libelled againſt for *not paying towards repairing the Pariſh Church*. The Caſe, as appeared upon the Libel was, the Inhabitants of this Chapelry *had never hitherto contributed, but had always buried in the Mother Church, till H. 8th's Time, when the Biſhop conſecrated a Burial-Place* for them; *in Conſideration whereof they agreed to pay towards the Repairs of the Mother Church*. It was held by Holt Ch J. That by the Common Law, the Pariſhioners of every Pariſh are bound to repair their Church; But by the Canon Law, the Parſon is, and ſo it is in Foreign Countries. In London, the Pariſhioners repair both Church and Chancel, though the Freehold is in the Parſon, and it is Part of his Glebe, for which he may bring an Ejectment. In the principal Caſe, thoſe of a *Chapelry may preſcribe to be exempt* from repairing the Mother Church, *as where it buries or chriſtens within itſelf, and* has *never contributed* to the Mother Church; For in that Caſe *it ſhall be intended Co-eval*, and not a latter Erection in Eaſe of thoſe of the Chapelry, but here it appears, That the Chapel could be only an Erection in Eaſe, and Favour of them and the Chapelry; For they of the Chapelry buried at the Mother Church till H. 8th's Time, and then undertook to contribute to the Repairs of the Mother-Church. 1 Salk. 164. pl. 2. Ball v. Croſs.

Fol. 291.

(K) Jurisdiction. Reparation. *Ornaments.*

1. IF a Man be rated for the Ornaments of the Church according to his Land, which he has in the Parish, a Prohibition lies; Because he ought to be rated for them according to his Personal Estate. M. 20. Ja. B. R.

S. P. Win. 53. Mich 20 Jac. Anon. For such Taxation for Ornaments is Personal only.

2. If a Man, who is not an Inhabitant in the Parish, but has Land there, is rated for the Ornaments of the Church according to the Land, a Prohibition lies; For the Inhabitants ought to be rated for them. M. 20. Ja. B. R. per Curiam. Resolved, and Prohibition granted, this being moved by Master Yelverton, who said that it had been divers Times so resolved.

2 Roll. Rep. 262. Mich. 20 Jac. B. R. Wilmore's Case, and seems to be S. C. — S. P. by the Chief J. to which Chamberlayne J. agreed, and none denied it. Ibid. 270. Hill. 20 Jac. B. R. The Churchwardens of . . . . . — See the last Note to pl. 4.

See (H) pl. 10. contra. But then it must be *alleg'd, That that Plea was offer'd* in the Ecclesiastical Court, because *Reparation of Churches* is proper for their Cognizance.

3. If all the Parishioners are not rated for the Reparation of the Church, but some are and some are not, and those who are rated are sued in the Ecclesiastical Court, a Prohibition shall be granted. M. 11. Ja. B. R. Per Curiam.

Vent. 308. Pasch. 29 Car. 2. B. R. Anon.

Poph. 197. S. C. — The Parish of B. levied a Tax upon all the Lands in the Parish for New *Casting their Bells, so much for every Acre, but* they *excepted* 900 *Acres of Wood* of the Bishop of London, *pretending they were discharg'd by Custom.*

4. If the major Part of the Parishioners of a Parish, where there are 4 Bells, agree that there shall be a fifth Bell, and a 5th is made accordingly, and they make a Rate for Payment for it; This shall bind the lesser Part of the Parishioners, tho' they do not agree to it; For otherwise any obstinate Persons may hinder any thing intended, and which is fit for the Ornament of the Church. Mich. 2 Car. B. R. between per Curiam. Prohibition denied, it being moved by Master Wilde. This concerns the Parishioners of *Bromsgrove* in Worcestershire.

A Parishioner was sued, and Sentence given against him in Paul's, and the Sentence affirm'd upon Appeal, and now he prays a Prohibition. And Serj. Crew said, That this Custom was *against Law*; whereupon Doderidge and the Court said to him, That he should make his Suggestion, and then he should have a Prohibition.

Bells are only Church Ornaments, and are a *personal Charge upon Inhabitants*, and not upon those who live elsewhere, tho' they occupy Lands in that Parish. 3 Mod. 211. Pasch. 4 Jac. 2. B. R. Woodward's Case. —But 1 Salk. 164. Trin. 1 W. & M. B. R. S. C. by Name of Woodward v. Makepeace it was held per Cur. That tho' he does not personally live in the Parish, yet by having Lands in his Hands, he is taxable; and whereas it was pretended the Bells were but Ornaments, it was held, They were *more than Mere Ornaments*; That they were *as necessary as the Steeple*, which is of no Use without the Bells, and Holt C. J. said, If he be an Inhabitant as to the Church, which is confessed, how can he not be an Inhabitant as to the Ornaments of the Church?

5. The Churchwardens libell'd for a Rate made *to repair he Church, and for dividing the Church House (which did not belong to the Church) into several Rooms for the Use of the Poor, and for Payments of the Marshalsea Money, and for making new Chimes.* It was suggested for a Prohibition, that the Things mentioned in the Rate are jumbled together, and such as are not cognizable in the Spiritual Court, and that the Chimes are only Ornaments; But it was answered, That they are not only Ornaments but useful and convenient; And a Prohibition was denied per tot. Cur. Lutw. 1019. Hill. 36 & 37. Car. 2. C. B. Watkins v. Seyman & Webb.

See (H) 18. Marg.

6. Rate to pay for Ornaments in Proportion to the yearly Value of *Racks* and *Mills* is not good. 5 Mod. 391. Hill. 9. W. 3. Hawkins's Case.

7. A Prohibition for libelling in the Spiritual Court for a Pariſh Rate for mending and cleanſing the Pariſh *Organs*, was granted. 12 Mod. 416. Mich. 12 W. 3. B. R. Anon.

8. A Rate was made at a Veſtry *for Building of a Gallery*; and for refuſing to pay his Part, a Pariſhioner was ſu'd in the Spiritual Court, and thereupon he now pray'd a Prohibition, becauſe a Pariſh could not be tax'd for the Building a Gallery, which is neither Uſeful nor Ornamental to a Church. But this was not much regarded by the Court. 10 Mod. 13. Mich. 9 Ann. B. R. Forte v. Buviere.

(L) *In what Caſes* it ſhall be *granted for a Collateral Cauſe.*

1. **If a Suit be in the Spiritual Court to** try the Bounds of a Pariſh, **a Prohibition ſhall be granted, for they ſhall not try it. Mich. 14 Ja. B. R.** *Fiſher* **and** *Chamberlaine.* **Reſolved. H. 41 El. B. R. between** *Piper* **and** *Barnaby.* **Adjudg'd, and Prohibition granted. H. 13 Ja. B. R. between** * *Foſter* **and** *Hyde.* **Adjudg'd.**

See (E) pl. 1. 3. —— * S. C. Roll. Rep. 332. pl. 39. And a Prohibition was granted, becauſe they would try the Bounds of a Pariſh; and the Plaintiff in the Prohibition *ſhew'd for Title, That the Parſonage appropriate came to the Crown by the Statute of Diſſolutions, and that Queen Mary granted it* to a Corporation, who leas'd it to the Plaintiff for a certain Term, but did *not ſhew the Letters Patents*, nor the Deed of grant from the Corporation; and thereupon it was demurr'd for a Conſultation, for this was reſolv'd 10 Rep. in Dr. **Leyfield**'s Caſe, not to be good. And Coke Ch. J. ſaid, That they would have the Letters Patents and the Deed ſhewn to them A Latere; becauſe for the Default of pleading them, a Conſultation ſhall not be granted for the Spiritual Court to try the Limits of the Pariſh. And after they join'd Iſſue by Conſent.

S. the Plaintiff ſued in the Spiritual Court *for Tithes* againſt the Defendant *within the Pariſh of C.* The *Defendant ſaid, That the Tithes are within the Pariſh of A.* and the *Parſon of A. came in Pro intereſſe ſuo*, and thereupon they proceeded to *Sentence*, and that was given *againſt S. who now ſued a Prohibition*; and the Queſtion was, If Within Such a Pariſh or Such a Pariſh be triable by the Law of the Land, or by the Law of the Church? Wray Ch. J ſaid, It hath been taken, That it is triable by our Law. Fenner, The Pope has not diſtinguiſhed Pariſhes, but has ordained, That Tithes ſhall be paid within the Pariſh. 3 Le. 129. pl. 182. Trin. 28 Eliz. in B. R. Stranſham v. Collington. —— S. C. Cro. Eliz. 228. pl. 17. a Prohibition was granted; for the Bounds of the Pariſh are triable at Common Law.

The Bounds of Pariſhes, tho' coming in Queſtion in a Spiritual Matter ſhall be tried in the Temporal Court. This is a Maxim in which all the Books of Common Law are unanimous, tho' our Provincial Conſtitutions expreſsly mention Limits Parochiarum, among the Matters, Quæ Mere ad Forum Eccleſiaſticum pertinere noſcuntur, and quæ non poſſunt ad Seculare Forum aliquatenus pertinere. 1 Gibſ. Cod. 239.

The Reaſon why Bounds of Pariſhes are triable at Common Law, is becauſe the Preſcription is the Ground thereof; Per Hale Ch. J. And per tot. Cur. This is of Right, and not to be denied where grantable. 3 Keb. 286. Paſch. 26 Car. 2. B. R. in the Caſe of Brown and Bard v. Palfry.

But where Prohibition was pray'd, becauſe the Bounds of 2 Vills in the Pariſh of A. came in Queſtion, the Prohibition was deny'd by all the Court; for tho' the Bounds of a Pariſh are not triable, *the Bounds of a Vill* in the ſame Pariſh *are triable* in the Eccleſiaſtical Court. Lev. 78. Mich. 14 Car. 2. C. B. Petler v. Yaleman.

2. **If a** Vicar **of a Pariſh** libells againſt another to avoid his Inſtitution to **the Church of** D. **which he ſuppoſes to be a Chapel of Eaſe appertaining to his Vicarage, and the** Defendant ſuggeſts, That D. is a Pariſh by itſelf, and not a Chapel of Eaſe, **a Prohibition ſhall be granted; for they ſhall not try the** Bounds of the Pariſh. **Mich. 14 Ja. B. R.** *Fiſher* **v.** *Chamberlaine.* **Adjudg'd for the Church of** *Oakely* **and** *Clapham*; **and yet there he alleg'd it,** Subdole libellando.

3. **If the Queſtion be in Court Chriſtian,** Whether a Church be **a** Parochial **Church** or but a Chapel of Eaſe, **a Prohibition lies. Tr. 3 Ja. B. The Wardens of St.** *Sampſon*'s **Caſe of Cornwall. P. 9 Car. B. R. between** *Elie Vicar of Alderburne* **in the County of Wilts and** *Ccoke.* **Prohibition granted, I being for the Vicar; and upon**

this, Iſſue join'd, Whether they were ſeveral Pariſhes, and tried by Verdict to be one Pariſh.

4. If in a Pariſh there be a Chapel of Eaſe and a Vicar thereof diſtinct from the Parochial Church, and the Vicar is endow'd of the Tithes of the Pariſhioners who are inhabiting within the Chapel, and the Vicar ſues one of the Pariſh who is not within the Chapel, and he ſays, That he is of the Pariſh and not of the Chapel, a Prohibition ſhall be granted; for now the Bounds of the Chapel come in Queſtion. H. 15 Ja. B. R. between the Vicar of the Chapel of *Boſton* in Cornwall and another of the Pariſh of .....

5. If the Churchwardens of a Pariſh ſue a Vill for Reparation of their Church, ſuppoſing the Vill to be an Hamlet within their Pariſh, and the Vill [pleads] that it is a Pariſh of itſelf, and not an Hamlet of the other * Pariſh, a Prohibition ſhall be granted; for now the Bounds of the Pariſh come in Queſtion. Tr. 16 Ja. B. R. between *Perry* and *Thomas* Plaintiffs, againſt . Prohibition granted.

* Fol. 292.

A Prohibition ſhall *not* be granted *by a bare Surmiſe*, that he is ſued for Tithes by the Parſon of D. of Lands in the Pariſh of S. *unleſs it appears in the Pleading*

6. If a Suit be in the Conſiſtory of Durham for Tithes of Land lying in Berwick, no Prohibition ſhall be granted upon a Surmiſe, That the Land lies in Amerton in the Kingdom of Scotland, and not in Berwick; for tho' this be true, yet it may be that the Parſon ought to have the Tithes thereof. Tr. 11 Car. B. R. between *Morton* and *Roſdon*. Per Curiam, After a Prohibition upon ſuch Suggeſtion made, a Traverſe taken, That it does not lie in Amerton in the Realm of Scotland, a Conſultation granted; and it ſeems it was partly in reſpect to the ſaid Realms of Scotland and England in Point of State.

in the Spiritual Court; for they there ſhall not be Judges of the Bounds of the Pariſh. By the Court. Noy 147. Philips v. Slacke, cites 5 H. 5. 10. 22 E. 4. 24.

7. If a Man who has Land by Deſcent ſues another in the Eccleſiaſtical Court for calling him Baſtard, a Prohibition ſhall be granted; for it tends to Temporal Diſinheritance. M. 3 Ja. B. R. Per Curiam.

If a Suit be in the Spiritual Court for a Matter whereof they have Juriſdiction, and

8. If a Man ſues for a Legacy in the Spiritual Court againſt an Executor, and he there pleads, That he has not Aſſets but for Debts. If the Court diſallows this Plea, a Prohibition ſhall be granted. Paſch. 15 Ja. B. R. between *Singleton* and *Wade*. A Prohibition granted accordingly.

therein a Plea is pleaded which is triable at the Common Law, yet if they will *allow the Plea*, they ſhall have Juriſdiction thereof, and try it; otherwiſe a Prohibition lies. Agreed per Curiam. Cro. E. 595. pl. 38. Mich. 39 & 40 Eliz. C B. in the Caſe of Somerſet v. Markham.

If Goods are *deviſ'd toB. as Son and Heir of A.* and B. ſues the Executors in the Spiritual Court for the Goods, and the *Executors ſay, That B. is not Son and Heir of A.* and thereupon they are at Iſſue; It was held, That the Spiritual Court ſhall have Juriſdiction, becauſe it *is dependent on the firſt Matter*; beſides B. would otherwiſe be Remedileſs, for he cannot ſue for the Goods ſo deviſ'd in the Temporal Court. Kelw. 110. a. pl 33 Caſus incerti Temporis.

So if Deviſee of Goods ſues for them in the Spiritual Court, and the *Executor pleads Ne Deviſa pas*, this ſhall be try'd in the ſame Court; becauſe the principal Thing is merely Spiritual, and this Iſſue depending upon the Principal, ſhall enſue the ſame Courſe, and be try'd in the ſame Court. Kelw. 110. b. pl. 33. Caſus incerti Temporis.

So if A. deviſes Goods to B. and dies, and B. ſues in the Spiritual Court for the Goods, and the *Defendant ſays, That the Property of the Goods is his*; this Property ſhall be tried in the Spiritual Court, and yet it is a Temporal Thing. Kelw. 110. b. pl. 34. Caſus incerti Temporis. Per Huſſey.

So if the Parſon ſues in the Spiritual Court *for a Mortuary*, and the *Iſſue is taken upon the Property*; and ſo of all Iſſues, being upon the ſame Thing, they ſhall be tried by the Spiritual Court. Kelw. 110. b. pl. 34. Per Huſſey.

But if Teſtator deviſes Goods to B. and the *Executors forge a new Will, in which there is no ſuch Deviſe*, the Action upon the Statute 1 H. 5. cap. 2. againſt the Executors, ſhall be in the King's Court, becauſe the Suit is upon a Thing which merely concerns his Court. Kelw. 110. b. pl. 33. Per Grantham. Per Caſus incerti Temporis.

In a *Suit for* a *Legacy in* the *Spiritual Court* they were at *Iſſue* there *upon a Point of Covin*, as touching Matter there alleged, in Diſcharge of a Legacy; Upon this a Prohibition was pray'd, and denied, and a Conſultation granted, becauſe *they had Conuſance of the Principal*, and *therefore they* have Cauſe alſo there to *determine* of *the Acceſſory*, being Covin, concerning the Legacy; It was adjudg'd for the Conſultation, and

and the Prohibition denied. 3 Bulſt. 314. Mich. 1 Car. B. R. in the Caſe of Dickes and Uxor v. Browne. — cites Paſch. 14 Jac. B. R. Wallis v. Leyde.

An *Executor of an Executor was ſu'd*, who *pleaded Riens enter Maines* ; The Spiritual Court refuſed that Plea ; upon which a Prohibition was awarded out of B. R. Noy 77. Dixye v. Brown. — S. C. Palm. 422. Paſch. 1 Car. B. R. —— S. C. and reported in almoſt the ſame Words. Lat. 114. by the Name of Watkins's Caſe. ——— 3 Bulſt. 314. Dickes v. Brown, S.C. But ſays, That the Prohibition was granted upon a Miſopening the Suggeſtion to the Court. And per Cur. we do here try *Fully Adminiſter'd* or Not, by a Jury; they there try this Per Teſtes, and they have Conuſance thereof; But if they, in their Proceedings, refuſe ſuch a Proof for Fully Adminiſtred in Diſcharge of the Party, which is allowable at Common Law, a Prohibition then is to be granted ; But here nothing is in this Suggeſtion, but that they there went to Iſſue only upon Fully Adminiſtred or Not, the which of itſelf is no Cauſe to have a Prohibition. —— If they *refuſe to accept of the Plea* of *Plene Adminiſtravit*, the Party ought to *appeal*, becauſe they proceed otherwiſe than they ought. Sid. 249. Trin. 17 Car. 2. Anon.

9. Libel for not repairing Part of the Church-Wall, which by *Cuſtom* he was bound to do. A Prohibition was granted *after Sentence* ; becauſe a Cuſtom is not triable in that Court. Carth. 33. Paſch. 1 W. & M. B. R. Tyler v. Manſel.

(M) In what Caſes they ſhall *not have Juriſdiction* for a Collateral Cauſe.

1. IF A. be preſented by J. S. to a Benefice, [and is] admitted, inſtituted, and inducted, and after the King preſents his Clerk to the ſame Church, ſuppoſing A. to be preſented by Simony, and his Clerk is inſtituted and inducted. upon which A. ſues in the Eccleſiaſtical Court againſt the Clerk of the King, ſuppoſing that he did not come in by Simony, and ſo prays, That the Super-Admiſſion, Inſtitution, and Induction of him be repeal'd, a Prohibition ſhall be granted for the Clerk of the King upon his Suggeſtion, That A. was preſented by Simony. For now tye only Queſtion between them is Whether the Church was void or not at the Time of the Preſentment of the King, which is triable only by the Temporal Court. Tr. 16 Ja. B. R. between *Sariſon* and *Bathoe*. Reſolved per Curiam, and a Prohibition granted, but after the Prohibition was ſtay'd. But Hill. 16 Ja. B. R. the Prohibition was granted, tho' it was ſaid, That they only queſtion'd the Inſtitution in the Eccleſiaſtical Courts for this is not to be allow'd after Induction.

2. The Patron of a Benefice may be ſued in the Eccleſiaſtical Court for preſenting of his Clerk (who is now inducted) for Simony ; for the Statute of Simony doth not take away the Eccleſiaſtical Juriſdiction to puniſh the Party Pro ſalute Animæ. H. 11 Ja. B. R. Sir *William Boier's* Caſe. Reſolv'd. 2 Bulſt. 182. S.C. Hill. 11 Jac. And there Coke Ch. J. ſaid, That we are not to take Notice of any Simony, this being puniſhable in the Spiritual Court, and if they meddle only Pro ſalute Animæ, they are not to be prohibited ; nor is a Prohibition to be granted in this Caſe, by reaſon that they examined *upon Oath touching the Simony* ; and this is clear, becauſe it was ſo done voluntarily ; and notwithſtanding the Incumbent be dead, yet the Crime remains and is living, and the Examination here by them was only Pro Salute Animæ. *But if there be any Article to be examined upon, which any ways draws the* * *Right* and Title *of the Benefice into Queſtion*, then clearly a Prohibition is to be granted, but not otherwiſe ; And ſo no Prohibition was granted. —— * S. P. Bulſt. 179. 9 Jac. in Holt's Caſe. ——— S. P. 2 Le. 168. pl. 205. Paſch. 26 Eliz. C. B. in Gerard's Caſe. ——— 3 Le. 98 pl. 140. S. C.

3. If A. recovers in Quare Impedit againſt the Ordinary and the Incumbent, and the Incumbent brings Writ of Error, in which the Judgment is affirm'd, and a Writ to the Biſhop is granted for A. upon which A. preſents his Clerk to the Biſhop before any actual Remotion of the firſt Incumbent, and his Clerk is admitted and inſtituted, upon which the firſt Incumbent appeals to the Audience for a Super-Inſtitution Roll. Rep. 62. S. C. accordingly. — P. an Incumbent of a Church *travell'd to Achaia and*

other Parts of Greece, and it was not known whether he was alive or dead; whereupon G. was instituted and inducted.

tion **before that he was removed, a Prohibition shall be granted**; for the first Incumbent was removed in Law by the Judgment, **tho' he continued Incumbent de Facto till the last Incumbent was presented**; and this last Institution was by Force of the King's Writ, and therefore no Appeal may be from it. M. 12 Ja. B. R. between *Whistler* and *Singleton*. **Adjudg'd, and Prohibition granted.**

Afterwards the Procurators of P. libel'd against G. in the Ecclesiastical Court to try the Super-Institution. It was *suggested* for a Prohibition, *That after Induction the Ecclesiastical Court cannot try the Super-Institution, and that G. was now in his first Fruits*, and that therefore the Court may grant a Prohibition; And it was granted. Litt. Rep. 140. Mich. 4 Car. in the Exchequer. Pettie's Case.

Prohibition. The Plaintiff declared, * Fol. 293. That Pleas of Advowsons belong to the Common Law, and not to the Spiritual Court; and that he was instituted to the Church

4 **If A. be instituted and inducted to a Church, and after he is sued in the High Commission Court, because one B. was instituted and inducted before, and * after A. was** super-instituted and inducted, **by which by the Canon Law he is an Intruder, and** is to be punished as an Intruder, **To which A. answers, That he did not know that B. was instituted and inducted before him, by which he excuses himself of any Crime, a Prohibition shall be granted; for they shall not** try which of them has the better Right after † Institution and Induction, **but this shall be tried at the Common Law. But the Ordinary may punish any such Clerk, who procures himself to be super-instituted and inducted,** knowing the Institution and Induction of another. M. 16 Car. B. R. between *Maddocks* and *Chival*. **Per Curiam, A Prohibition granted to the High Commission Court.**

of D. and the Defendant *libell'd* in the Spiritual Court, *That he himself was instituted* to the said Church, *and inducted* before the Plaintiff, who had obtained a Super-Institution upon him; which being scandalous to his Title, he *su'd there to set the Super-Institution aside*, But the Spiritual Court proceeded notwithstanding, and tho' the Induction belong to the Common Law; The Defendant pleaded, That he did not prosecute Contra Prohibitionem, but Pro Consultatione habenda he demurr'd; And per Cur. He ought to have it; for tho' the Defendant was inducted, yet it doth *not appear that the Plaintiff was inducted*, and so the Plea stands only upon the Super-Institution, which is proper for the Spiritual Court; But *afterwards* it being *shewn to the Court, that the Plaintiff was inducted also*, the Consultation was stay'd, that the Plaintiff might declare De novo upon his Institution and Inducted. But upon the present Declaration the Prohibition cannot stand. 2 Lev. 125. Hill. 26 & 27 Car. 2. B.R. Monday v. Porton.

† Where the first Incumbent comes in by *Simony*, there can be no Super-Institution; for in such Case the Church is void De Jure & De Facto, and they cannot meddle with the Institution; but with the Simony they may. Per Cur. Litt. Rep. 176. Mich. 4 Car. C. B. in the Case of Stevens v. Cripps.—And per Williams J. Matter of Induction and the Validity thereof is determinable at Common Law, and not in their Court; and the whole Court agreed with him, and a Prohibition was granted. Bulst. 179. 9 Jac. Holt's Case.

* Where the Spiritual Court would by any Article draw the Right and Title of the Benefice into Question, a Prohibition is to be granted. 2 Bulst. 183. in Sir William Boier's Case.

5. **If the** Parson **of B.** takes a second Benefice within the Statute without Dispensation, **by which the first Benefice is void, which is of the Patronage of the King, and after Ad uberiorem Cautelam & ad tollendum omne Dubium,** he obtains a new Presentment of the King, **and upon this requires the Bishop to admit, and super-institute him, the Bishop takes Time to be advised, and** in the mean Time the King presents another, who is instituted and inducted. **And after the** first Parson sues the Bishop for Injustice **in the Spiritual Court; a Prohibition shall be granted; for those of the Spiritual Court ought not to examine the** * Right of Presentations. M. 3 Ja. B. *Williams* **Case adjudged, and Consultation denied.**

——And see the Notes upon pl. 4.

6. **If a Man sues in the Court Christian to have** Account for the Profits of a Benefice, **a Prohibition lies, because this belongs to the Common Law.** H. 3. Ja. B. **adjudged.**

7. But **if the Suit be there for the Profits** taken in Time of Sequestration, **no Prohibition lies.** H. 3 Ja. B. **adjudged.**

8. If

8. If two Churches are united by Patron, Ordinary, and the King, by the Statute of 37 H. 8. upon a Surmiſe that the 2 Churches are not diſtant more than a Mile the one from the other, and after the Pariſhioners are ſued in the Spiritual Court to come to the one Church, a Prohibition lies upon a Surmiſe, that the Churches are diſtant more than a Mile the one from the other. Mich. 10 Car. B. R. between *Dobſon* and *Sir Robert Mordaunt*, a Rule for a Prohibition granted; the Churches united were *Wellesborough and Walten Devell* in the County of Warwick. But after P. 11 Car. B. R. The Prohibition denied, becauſe there was not any Suit depending againſt the Pariſhioners, nor any other Suit in the Spiritual Court to be prohibited.

9. If the Parſon libels in the Spiritual Court for a Modus Decimandi, if the Defendant ſuggeſts that he has miſtaken the Modus, and ſhews another Modus, he ſhall have a Prohibition, becauſe they ſhall not try the Modus by which his Inheritance ſhall be bound. And an Uſage for 10 Years is good Cuſtom by the Spiritual Law; and if this ſhall be ſuffered, they will defeat the Temporal Court of all Juriſdiction. My Reports. 14 Ja. *Goſlin and Harden* adjudged.

See (F) pl. 17. (Q) pl. 14. 15.—— S. C. Roll. Rep. 419. accordingly. And Mountague Ch. J. ſaid that the Spiritual Court never had Juriſdiction of the Matter, by Reaſon of their having miſtaken the Modus.—— S. C. 3 Bulſt. 241

A Parſon libell'd for the 10th Shock, and alleg'd it to be the Cuſtom Time out of Mind, to ſet the Corn out in that Manner. The Pariſhioner ſuggeſted that the Cuſtom was to ſet out the 10th Sheaf and not the 10th Shock; and that tho' he had alleg'd this, they had refus'd the Plea. A Prohibition was granted, and afterwards a Conſultation was denied. The Court agreed that a Modus Decimandi was ſuable for in the Spiritual Court, but when it is denied they ought to ſurceaſe. Whitlock J. ſaid, that here is no Title made for a Conſultation, but yet he thought it good enough in this Caſe, becauſe the *Right of the Tithes is not denied, but the Manner of ſetting forth*; that they vary not upon the *Modo Decimandi*, but upon the *Modo Exponendi*; but the other Juſtices ſaid nothing to this Point. Palm. 440. Paſch. 2 Car. B. R. Steward's Caſe.

10. If a Man preſents to the Biſhop, and upon Refuſal ſues to the Archbiſhop, who after Monition, Citation and Default of the Biſhop, admits and inſtitutes the Incumbent, upon which he is alſo inducted, and after the Biſhop ſues his Double Quarrel, appealing from the ſaid Sentence to the Delegates, to annul the Admiſſion and Inſtitution, A Prohibition ſhall be granted, becauſe after Induction the Admiſſion and Inſtitution ought not to be drawn in Queſtion in the Spiritual Court. M. 12 Ja. B. between Sir *Timothy Hutton* and the *Biſhop of Cheſter*. Per Curiam.

Mo. 861. pl. 1182. S. C. accordingly, by the Name of Rowth v. the Biſhop of Cheſter, and ſays, That if the Juſtices ſee Cauſe, they may write to the Biſhop to certify concerning the Inſtitution.——S. C. accordingly. Hob. 15. where the Suggeſtion to avoid the Inſtitution was, that it was made without Warrant, it being made by the Archbiſhop at London, he being there in Parliament-time, and ſo being made out of the Dioceſs was a Nullity. But it was held, That the Induction being a Temporal Act, was not to be avoided but by a Quare Impedit, or the like at Common Law. And tho' the King ſignified his Pleaſure by ſeveral to have a Conſultation granted, yet they anſwered that they could not do it by the Law, and ſo after many Meſſages the Matter ſtood.

11. If upon a Reſignation of the Incumbent, another be preſented and inſtituted, and after he who reſign'd libels in the Eccleſiaſtical Court againſt the new Incumbent, pretending that he did not reſign, and after makes a Leaſe upon which Iſſue is joined, whether he was Parſon at the Time of the Leaſe made to try the Title, yet no Prohibition ſhall be granted, becauſe the Queſtion there is * only upon the Reſignation, which properly appertains to the Eccleſiaſtical Court. Mich. 10 Ja. B. *Manknoll's* Caſe. Per Curiam.

* Fol. 294.

12. If a Man pending a Quare Impedit libels in the Spiritual Court to avoid the Inſtitution of the Clerk of the ſame Church after he is inducted, a Prohibition ſhall be granted; for otherwiſe they will prevent the Quare Impedit. Mich. 14 Ja. B. R. between *Fiſher and Chamber-*

See pl. 10.— The Defendant in the Quare Impedit was

instituted and inducted pending the Action.

Chamberlain, ſo held by Dodderidge; and he ſaid that this had been ſo adjudged diverſe Times in Bank.

The Plaintiff in the Quare Impedit ſued in the Spiritual Court to remove him; but upon Suggeſtion that the Defendant was inducted, a Prohibition was granted. Lat. 205. Oliver v. Huſſey.— Pending a Jure Patronatus, the Biſhop admitted one of the Preſentees; whereupon the Patron of the other Preſentee libell'd in the Spiritual Court; but a Prohibition was granted, and a Conſultation afterwards denied. 2 Le. 168. pl. 205. Paſch. 26 Eliz. C. B. Gerard's Caſe.——3 Le. 98. pl. 140. S. C.

S. P. But if the Suit to repeal the Inſtitution had been before the Induction, no Prohibition ſhould be granted. Sid. 293. Trin. 18 Car. 2. B. R. in Caſe of Offley v. Beſt

13. So ſhall it be if after Induction, where no Quare Impedit is pending, if the Suit be there to avoid the Inſtitution, a Prohibition ſhall be granted; for by the Induction it is become Temporal, which draws the Spiritualty to it; for * if they avoid the Inſtitution, they ſhall avoid by Conſequence the Induction. Contra 14 Ja. B. R. between *Fiſher and Chamberlaine*, a Prohibition denied for the Church of *Clapham*.

——— * S. P. For if the Inſtitution was not good, the Induction is not good. Hob. 15. in Hutton's Caſe.

The Induction is Temporal, and the Spiritual Court cannot fruſtrate it; and tho' they ſhould give Sentence againſt the Induction, yet it remains good. Per Richardſon, quod fuit conceſſum. And per Cur. They cannot meddle with the Inſtitution after Induction. And by 3 J. A Prohibition may be granted, tho' no Suit was depending here, and tho' the Induction was utterly void, [as in Caſe of Simony, as the principal Caſe was] as well as where a Church was lawfully full before. And Prohibition was granted Niſi Cauſa. Litt. Rep. 165. Mich. 4 Car. C. B. Stevens v. Cripps.

S. P. Litt. Rep. 165. per Cur. in Caſe of Stevens v. Cripps.

14. If I preſent my Clerk, and he is admitted and inſtituted, and before Induction a Caveat is enter'd by a Stranger in the Spiritual Court, that he ſhall not be inducted, and thereupon an Inhibition is granted to the Archdeacon, that he ſhall not induct him. In this Caſe a Prohibition ſhall be granted, becauſe when he is inſtituted he has an Inception to the Lay Fee, and the Church is full againſt all, except the King; and if this ſhall be ſuffered, all Trials by Quare Impedit ſhall be ouſted. H. 14 Ja. B. Prohibition granted.

If the *King collates, or recovers the Collation to any Prebend,* and *his Clerk is admitted,* and afterwards the *Clerk who is vex'd ſues* in the Spiritual Court by

15. If a Biſhop collates, pretending a Lapſe, and thereupon the Patron preſents, and in a Quare Impedit recovers, and has a Writ to the Biſhop, and before his Preſentee has Inſtitution ſealed, the Archbiſhop ſends an Inhibition that he ſhall not be inſtituted, and thereupon Sentence is given in the Arches that he ſhall not be inſtituted, a Prohibition ſhall be granted upon this; for they ſhall not try again that which is before tried at Common Law, and draw in Queſtion the Recovery; for otherwiſe Recoveries at Common Law would be of little Force. H. 4 Ja. B. R. between *Fletcher and Baker*. Per Curiam.

Appeal &c. by which the Title of the Collation may come in Debate, the King ſhall have a Prohibition. And if the King recovers his Collation or Preſentation to any Church, and after Execution is diſturb'd by Appeals &c. *Or if the King's Clerk after Induction is vex'd by Appeals* &c. then the King ſhall have a Writ directed to all Sheriffs &c. to take and arreſt the Bodies of thoſe who make ſuch Impediments to diſturb the Execution of the Judgment, or of ſuch Preſentations or Collations made by the King; and alſo ſhall have a Prohibition to the Biſhops &c. And alſo the King may ſue ſuch Prohibition to the Party himſelf who ſues ſuch Appeals &c. that they do not ſue ſuch, or permit ſuch Appeals &c. to be. F. N. B. 42 (M) 43 (N.)

If the *King recovers his Preſentment* to a Church, *and has a Writ* to the Biſhop &c. *to remove* the others Incumbent, for which the *Incumbent ſues an Appeal* in the Archbiſhop's Court &c. by Reaſon whereof the *Archbiſhop ſends a Prohibition* that he do not admit the King's Clerk pending the Appeal &c. the King ſhall have a Writ to the Archbiſhop and his Officers to take off his Inhibition, and that they do nothing, nor ſuffer any Thing to be done in Derogation of the King's Right, and ſhall have another Writ againſt the Incumbent, that he follow not ſuch Appeals &c. And alſo the King may have an Attachment directed unto the Sheriff againſt ſuch Incumbent, if he go on there after ſuch Prohibition directed unto him. F. N. B. 43. (A.)

And it appears by the Regiſter, that another *common Perſon* who recovers his Preſentment, or has Title to preſent, ſhall have ſuch Writs of Prohibition unto the Spiritual Judges, or the Party, that they ſhall not proceed, or purſue ſuch Appeals &c. and alſo Attachment againſt them if they do &c. F. N. B. 43. (B.)

And

And if the *King recovers* his Preſentment, and has a Writ unto the Biſhop, and his Clerk is inſtituted and inducted, if the Biſhop, at the Suit of others, hath Provocations or other Inſtruments to cite the King's Incumbent to the Court of Rome &c. the King ſhall have a Prohibition to the Biſhop, and an Attachment upon it, if &c. *And* it ſeems that the King ſhall have a Prohibition *without any Recovery* had before, *if his Preſentee be inſtituted* &c. And *ſo* it ſeems *a common Perſon* ſhall have and ſue ſuch a Prohibition, *when the Suit is to try the Title of the Preſentment* or Collation, yet the Writs in the Regiſter are and ſpeak of a Recovery. F. N. B. 43. (C.)

16. If a Patron preſents A. his Clerk to his Church, and the Biſhop delays him for Examination for more than two Months, whereas by the late Canons he ought not to delay him for more than a Month, whereupon A. fearing that Lapſe will incur ſues a Duplex Querela, in the Court of Audience, thereby to inhibit the Biſhop to preſent, and after the 6 Months the Court of Audience gives Judgment for him, and after the Biſhop, notwithſtanding this, collates by Lapſe; and thereupon in the Court of B. R. pray'd a Prohibition to the Court of Audience. The Prohibition ſhall be granted; for now if it be a Lapſe, the Eccleſiaſtical Law will not remove him, the Church being full. And if the Biſhop be a Diſturber, then his Clerk ſhall be removed, notwithſtanding the Plenarty by 6 Months before the Writ purchas'd; for Collation without Title does not make an Uſurpation; and therefore Quacunque via data, it does not appertain to the Eccleſiaſtical Law to proceed in the Duplex Querela. Tr. 3 Ja. B. R. between *Palmer and Smith*, Prohibition granted, and Conſultation denied.

17. The Defendant *ſuggeſted* for a Prohibition *to a Libel for Defamation in the Arches, that he is an Inhabitant within the Dioceſs of London, and ſo the Proſecution is contra formam Statuti* 23 *H.* 8. *cap.* 9. it was argued againſt the Prohibition, that it ought not to go, becauſe there had been a *Compoſition between the Biſhop of London and the Archbiſhop* for this Juriſdiction; and for that Reaſon the Archbiſhop doth not viſit in the Dioceſs of London, and that ſo is Gobbet's Caſe Cro. Car. 339. But per Keeling J. the Dioceſs of London is not within the Juriſdiction of the Arches, but the Archbiſhop hath a peculiar Juriſdiction there, conſiſting of 14 Pariſhes. And Twiſden J. ſaid that *the Compoſition* between the Ordinaries *cannot prejudice the People* for whoſe Benefit that Statute was made; and the Reaſon in Gobbett's Caſe is not good; for the Biſhop of London cannot agree that the Archbiſhop ſhall not viſit. The Court was divided. Raym. 91. Hill. 15 & 16 Car. 2. B. R. Ford v. Welden.

18. A Citizen of Briſtol had a Country Houſe, and *frequently received the Sacrament in the Pariſh Church in the Country*, likewiſe he received it frequently *in the Cathedral Church* in Briſtol, *but not in his own Pariſh Church in Briſtol*; for which Cauſe he was cited into the Eccleſiaſtical Court, and admoniſhed; and afterwards for not obeying and receiving in his Pariſh Church, according to the Monition, he was excommunicated, tho' one of the Surrogates of the Court but the Sunday before had with his own Hand given him the Sacrament; and tho' he there pleaded this, and likewiſe his receiving in the Country at his own Pariſh there, they would not allow it; upon this Matter appearing to the Court, a Prohibition was awarded. Skin. 101. Hill. 35 Car. 2. B. R. Anon.

19. A Woman was libell'd againſt in the Spiritual Court for *Incontinency with a Man ſince dead.* It was ſuggeſted for a Prohibition, that the Man was her Husband: And now the Spiritual Court could not examine whether he had been her Husband or not, becauſe that would tend to *baſtardize the Children*, and diſſolve the Marriage after Death of Party. Holt ſaid, If there were a *Marriage de facto*, tho' illegal, yet they ſhall not libel to avoid it after Husband's Death; but if there was none, the Death of the Man ought not to protect her from a Proſecution for her Whoredom. 12 Mod. 419. Mich. 12 W. 3. Anon.

20. One

So where A. marries B. and after turns her off, and takes L. to Wife, by whom he has Iſſue, and dies; after his Death, the former ſues the 2d Wife to avoid the Marriage, and held it could not be, becauſe the Husband was dead. Per Holt Ch. J. 12 Mod. 432. in the Caſe of Hemming v. Price. — cites Ed 4. Fitz. Conſultation, pl. 5.

20. One having 2 *Wives* died, and one of them libelled againſt the other for *Jactitation of Marriage*; And ſhe ſuggeſted, That it was to avoid her Marriage, and a Prohibition granted, per Holt Ch. J. 12 Mod. 432. Mich. 12 W. 3. In the Caſe of Hemming v. Price. — cites 7 Co. 43. b. 44. a. Kenn's Caſe. — Sty. 10.

Vent. 3. Mich. 20 Car. 2. B R. The Biſhop of Lincoln v. Smith.

21. A Libel was *by a Biſhop for a Penſion.* It was *ſuggeſted* for a Prohibition, *That he ſued before his own Commiſſary*, and ſo would be Judge in his own Cauſe: But a Prohibition was denied; For per Holt Ch. J. and Eyre J. a Suit lies before a Chancellor in ſuch Caſe, like the Caſe in Dyer, where the Lord ſued before his Steward. Comb. 131. 1 W. & M. B. R. Anon.

(N) *What* ſhall be ſaid *a* * *Defamation Spiritual* to maintain a Suit in the Eccleſiaſtical Court.

* As to Defamations determinable in the Spiritual Court, it was reſolv'd, That ſuch Defamation ought to have 3 *Incidents.* 1ſt, † Fol. 295. That it *concern Matter merely of Eccleſiaſtical Cognizance*; as for calling the Plaintiff Heretick, Adulterer, Schiſmatick &c. 2dly, It muſt *concern Matter merely Spiritual only*; for if it relates to any Thing determinable at Common Law, the Eccleſiaſtical Judge ſhall not have Cognizance thereof. 3dly, Tho' the Defamation be merely and only Spiritual, yet the Perſon defam'd cannot ſue there for Amends or Damages, but the *Suit ought to be only to puniſh the Sin & Pro ſalute Animæ.* 4 Rep. 20. pl. 17. Trin. 25 Eliz. B. R. Palmer v. Thorpe. — S. P. 2 Inſt. 492, 493. — F. N. B. 51. (I) in the new Notes there. (a) cites 22 E. 4. 10. & 2 E. 4. 10. that the Offence in this Caſe ought to be merely Spiritual.

1. Register fol. 54. b. Title Conſultatio. **Conſultation granted to proceed in Court Chriſtian** In Cauſa Defamationis, videlicet as well for the Crime of as alſo **becauſe the Juriſdiction of the Spiritual Court** per Tumultum & rixas Executionesque † ſuas in hac Parte debite faciendas nequiter impedivit, ex Officio ad Animæ ſuæ Correctionem proceſſit.

Roll. Rep. 407. pl. 44. S. C. ſays, That a Prohibition was granted, and afterwards a Conſultation, for the Reaſons here mentioned.

2. **If a Man libels in the Spiritual Court againſt another for ſaying that he was a** Witch, **or the** Son of a Witch, **tho' no Action lies for this at Common Law, yet no Prohibition ſhall be granted; for perhaps he may have ſome Spiritual Prejudice thereby, if he be the Son of a Witch, As that he cannot be a Prieſt, or ſuch like; (For it ſeems all the Force of the Words conſiſts in the laſt Words, they being ſpoke in the Disjunctive. My Reports 14. Ja. B. adjudged.**

——— Mo. 906. pl. 1263. Trin. 29 Eliz. **Morrice** v. **Smith**, a Prohibition was granted to a Libel for calling one Witch; And afterwards a Conſultation, becauſe an Action does not lie for it at Common Law, unleſs where Death enſues. But the Book ſays Quære now ſince the Statute of 1 Jac. for it has been adjudg'd, That an Action upon the Caſe lies ſince that Statute.—4 Le. 92. pl. 190. S. C. where the Words are *Veneficam, Sortilegam & Incantatricem Dæmoniorum.* And after a Prohibition a Conſultation was awarded; And it was held there, That to call one *Witch Generally* an Action lies not in our Law, as has been adjudg'd. But to ſay, *She hath bewitch'd ſuch a one*, an Action lies. And per Wray, Witchcraft, which is made Felony by any Statute, is not puniſhable by the Eccleſiaſtical Law; but in Caſe of Slander upon ſuch a Witchcraft, ſuch ſlandrous Words are of Eccleſiaſtical Juriſdiction; And for Witchcraft, which is not Felony, the Eccleſiaſtical Court ſhall puniſh the Party; And afterwards, in the principal Caſe, a Conſultation was awarded.

Error of a Judgment in C. B. in an Action for Words (viz.) *She is a Bawd, and has bewitch'd him by Witchcraft and Sorcery.* It was held by Jones & Croke J. that the Action well lies for the laſt Words, (And has bewitch'd him &c.) but for the firſt Words 'twas doubted; wherefore cæteris Abſentibus a Rule was given, That Judgment ſhould be affirm'd. Cro. C. 261. pl. 5. Trin. 8 Car. Hix v. Hollingſhed.

This was held to be

3. **If a Man libel in the Eccleſiaſtical Court againſt another for ſaying certain** Words **of him,** which would maintain an Action of the Caſe

Caſe at Common Law, **a Prohibition lies. H. 4. Ja. B. R.** *Turnain and Thorn*, **per Cur. M. 38, 39. El. B. R. between** *Butler and Bartlett* **adjudged.**

no certain Rule, and inſtanc'd in that of laying violent Hands on a Parſon, and of a Penſion by Preſcription &c. 3 Lev. 17. Cranden v. Walden.

Jones J. thought theſe *Differences* ought to be obſerved, viz. *Where* a Man calls a Woman Whore, or ſuch like Slander, for which a *Suit lies in the Eccleſiaſtical Court* againſt the Party, (if the Thing be true) there no Prohibition ſhall be granted; *but where no Suit lies for the Principal in the Spiritual Court, but the Slander is puniſhable at Common Law, as for calling a Man Thief, Traitor* &c. there if the Suit is in the Spiritual Court, a Prohibition lies. But if the Slander be ſuch as hinders her Marriage, ſhe may ſue either in the Spiritual Court or at Common Law. So if Words are ſpoke, which are only Words of Reproach; Action lies not at Law, neither do they concern any Thing whereof the Spiritual Court has Connſance, therefore for ſuch a Prohibition lies, as Knave, Drunkard &c. Quære de ceo. The Chief J. agreed to this, but the other Juſtices ſaid nothing. Jo. 246. pl. 5. Trin. 7 Car. B. R. Anon.

4. So if only **the** Words **which are** proper for the Juriſdiction of the Eccleſiaſtical Court are put in the Libel, **and which would not maintain an Action at Common Law by themſelves, yet** upon Suggeſtion **to the Temporal Court** of the Reſidue **of the Words, by** which **they** would maintain an Action at Common Law, **a Prohibition lies. M. 38, 39. El. between** *Butler and Bartlet* **adjudged.**

The Words muſt be taken together and ſhall not be ſplit. Per Holt. Farr. 81.

5. **If a Parſon of a Church calls A.** Drunkard, **upon which A. anſwers,** Thou lieſt; **if the Parſon ſues A. in the Eccleſiaſtical Court for giving him the Lie, a Prohibition lies; becauſe the Reaſon why he gave him the Lye was not Spiritual, but depending upon a Temporal Thing precedent. M. 7. Ja. B. between** *Simpſon and Waters.* **per Cur.**

2 Brownl. 272. S. C. in an Action brought at Common Law againſt the Parſon for Slander, where the Words ſpoke by him are, viz. Thou art drunk, and I never held up my Hand at the Bar as thou haſt done. —— Libel was for ſaying, *You lie like a knaviſh Perſon, and you brought one to ſwear and forſwear.* A Prohibition was deny'd; for they are Irreverend Words, and the Spiritual Court only can puniſh them Pro Reformatione Morum. Litt. Rep. 217. Mich. 4 Car. C. B. Proctor v. Barley.

6. **If a Clergyman be a Bailiff of the Manor of J. S. and he oppreſſes the Tenants of the Manor, and one of the Tenants ſays to him,** Thou art a Knave, and fitter to wear a White Cloak than a Black; **if the Clergyman ſues him for theſe Words in Court Chriſtian, a Prohibition ſhall be granted. B. R. adjudged,** cited **M. 7. Ja. B.**

One ſaid to a Clerk, a Spiritual Perſon, *Thou art a Woodcock and a Fool*; and for thoſe Words the Clerk ſu'd him in the Spiritual Conrt, but a Prohibition was awarded. Arg. Godb. 447. pl. 514. in the Caſe of Hye v. Dr. Wells. — cites Trin. 42 Eliz. Lovegrove v. Brewens.

7. **If a Man ſays of J. S.** he is a Railer and Sower of Sedition among his Neighbours, **he cannot be ſued for theſe Words in the Eccleſiaſtical Court, becauſe they are not in any reſpect Spiritual, nor trench to any Spiritual Defamation, but are merely temporal. Mich. 16 Ja. B.** *Pannel and Smith* **reſolved, and a Prohibition granted.**

S. C. Hob. 246. pl 313. Smith v. Pannel. For the Cauſe belongs to the Leet, except it were in the Church, or the like. Het. 132. S. C. & P. or unleſs it were any ways tending to the Eccleſiaſtical Rites.

8. **If a Man calls a Miniſter** Knave, **he may be ſued for this in the Eccleſiaſtical Court, and no Prohibition ſhall be granted. H. 7 Ja. B. per Coke.**

But Mich. 20 Car. 2 B. R. A Prohibition Niſi &c. was granted to a Libel for calling a Parſon Knave. Sid. 393. pl. 26. Mich. 20 Car. 2. B R. Anon. —— Vent. 2. Anon. ſeems to be S.C. and the Prohibition was granted, becauſe *it did not appear to relate to any Thing concerning his Function.* —— S P. 12 Mod. 104. Mich. 8 W. 3. Nelſon v. Hawkins (Dean of Chicheſter.) —— And Twiſden J. ſaid, That it was adjudg'd about 41 Eliz. That a Prohibition ſhould be granted to a Libel for ſaying, *Sir Prieſt, you are a Knave.* Sid. 393. pl. 26.— S. C. cited Vent. 2. in S. C.—— *So* where the Prior of L. libelled againſt R. and L. for *calling the Prior Churlſon, rotten Churl*, and *canker'd Churl*, a Prohibition was granted; for the Words concerned no Spiritual Matter, and therefore he could not ſue for them in the Eccleſiaſtical Court, neither could he have any Action for them at the Common Law. 2 Inſt. 493.

So a Prohibition was granted to a Suit by a Parſon for calling him *Fool, Aſs, and Gooſe*, for they are merely Words of Heat, and *do not touch him in his Profeſſion.* 2 Lev. 49. Paſch. 24 Car. 2. B. R. Newman v. Kingerby.— 3 Keb. 28. pl. 49. S. C.

But where the Words ſpoken *of a Clergyman* were (viz.) *Thou art, or you are, a pitiful pimping Raſcal.* It was ſuggeſted for a Prohibition, That the Words were ſpoken in Paſſion, he being provoked by the Parſon, who ſaid, He was a Beggar, and was going to run his Country, and was uſed to ſteal his Neighbours Ducks &c. and that he had alleg'd this Matter in the Spiritual Court, but it was refuſed. A Conſultation was granted upon Debate. Lutw. 1053. Paſch. 10 W. 3. Osborne v. Poole.

So where a Motion was for a Prohibition to the Spiritual Court, the

9. **If a Man ſays, That** he will not hear Sermons made by thoſe who are made Miniſters by Biſhops, **he may be ſued for this in Court Chriſtian, and no Prohibition ſhall be granted. H. 7 Ja. B. per Cur. adjudged.**

Plaintiff being proſecuted there, for ſaying, *He would not be of the Communion of the Church of England upon any Conſideration, for he believed if he was he ſhould be damn'd*; And the Reaſon offered for the Prohibition was, Becauſe the Libel was for a Contempt againſt the *Common-Prayer Book*, whereas this was not ſuch an Offence The Court was of Opinion, That tho' 'tis not an Offence againſt the *Common-Prayer Book*, yet 'tis certainly of Spiritual Cognizance, therefore the Prohibition was denied. 8 Mod. 338. Mich. 11 Geo. 1725. Sweetnam v. Archer.

A Libel was for theſe Words, *She will turn Tail to Tail with any Man*, intimating

10. **If a Man ſays of a Feme Covert,** She will be a meddling with a Thing, **he may be ſued for it in the Eccleſiaſtical Court, and no Prohibition ſhall be granted, becauſe this is a Spiritual Defamation. H. 9 Ja. B. Per Cur. Prohibition denied.**

that ſhe would be naught with any Man. But a Prohibition was granted, becauſe they are idle Words, and not puniſhable in the Spiritual Court. Het. 167. Paſch 7 Car. C. B. Crompton v. Waterford. — Litt. Rep. 365. Anon. but is S. C. and reported exactly the ſame, only that the one is in French and the other in Engliſh.

It is not an Offence puniſhable at Common Law, but only by the *Cuſtom of London*, and ſo the Action ſhould have been in the Spiritual Court.

11. **If a Man ſays of another, That** he keeps a Bawdy-Houſe, **and is ſued for this in the Spiritual Court, tho' he may have Action at Common Law, yet the Spiritual Law has a Concurrent Juriſdiction therein, and the Words are mixed, and therefore no Prohibition lies. 27 H. 8. 14. b. per Fitzherbert.**

Cro. El. 643. Anon. ——— Theſe Words are actionable, becauſe the Party may be indicted for it. Per Cur. Palm. 379. Trin. 21 Jac. B. R. in an Anonymous Caſe.

D. ſued T. in the Spiritual Court, becauſe tho' ſhe was of good Fame, and kept a Victualling-Houſe in good Order, yet the ſaid T. had publiſhed, That D. *kept an Houſe of Bawdry.* T. now brought a Prohibition, and well; Per Cur. For D. might have had an Action for that at the Common Law; eſpecially where ſhe *kept a Victualling Houſe as her Trade.* And the Juſtices ſaid, That the Keeping a Brothel-Houſe is inquirable in the Leet, and ſo a Temporal Offence; And ſo was the Opinion of the Court T. 7 Car. B. R. Mrs. Holland's Caſe. Noy 117. Thorne v. Alice Durham.

Libel was in the Spiritual Court for calling a Woman *Whore*; and ſaying, *That ſhe kept a Bawdy-Houſe*, and after Sentence Prohibition was moved for; and urged contra, That they ſhould have alleged below, That the Words were ſpoke at one and the ſame Time, and then they might be prohibited; but now that they have Juriſdiction below for calling a Woman *Whore*, and that was all they gave Sentence for, they would not grant a Prohibition. 12 Mod. 236. Mich. 10 W. 3 Anon.

* Fol. 296.

S. C. Noy 85.— S. C. Lat. 155.— S. C. cited Mar. 66. in pl. 103.

12. **If a Man ſays of another that** he is the Pander of J. S. **he may be** * **ſued in the Eccleſiaſtical Court; becauſe the Signification of this Word is well known, and it ſounds to a Spiritual Defamation. M. 2. Car. Lewes & Whitley, per Dodderidge and Jones contra Whitlock.**

Jo. 246. S. P. Anon. but ſeems to be S. C. Trin. 7 Car. B. R. And there

13. **If a Man ſays to another,** Thou art a Bawd, a filthy Bawd, and a Common Bawd, **and for this he is ſued in Court Chriſtian, no Prohibition lies, becauſe he cannot be indicted for this, if it be true, becauſe he did not ſay, That he** kept a Bawdy-Houſe, **which would be preſentable in a Leet. Mich. 7 Car. between** *Hollinſhed* **and** *Hicks.*

Per

Per Cur. Conſultation granted after Prohibition. **Mich.** 8 **Car. B. R. between** *Yates and Glover.* **Prohibition was denied where it was ſaid,** he was a Bawd, and would die ſo. by Jones J. for calling one Bawd, Suit lies either in the Spiritual Court or at Common Law, and Prohibition does not lie, for ſhe has an Election to ſue in either and took a Diverſity between ſuch Words and Words of Reproach, as Knave, Drunkard &c. To which the Ch. J. agreed, but the others ſaid nothing.

Libel was for ſaying, *Thou art a Bawd, and there were two Couple upon one Bed in thy Houſe.* The Court ſaid, That the Words, Thou art a Bawd, is a Thing Spiritual, and therefore no Prohibition ſhall be granted thereupon. Palm. 379. Trin. 21 Jac. B. R. Anon.

Libel was for ſaying, *Thou art an Old Bawd*; and thereupon a Prohibition was granted. But it was moved for a Conſultation, for that it had been adjudg'd 15 Jac. That for ſaying, Thou art a *Bawd*, no Action lay at Common Law; but otherwiſe, if he had ſaid, Thou keepeſt a *Bawdy-Houſe.* Whereupon a Conſultation was granted. Palm. 521. Hill. 3 Car. B. R. Roberts v. Brown. —— The ſame Diverſity was taken per Cur Palm. 379. Trin. 21 Car. B. R. in an Anonymous Caſe.—— Same Difference Cro. C. 229. Mich. 7 Car. B. R. in **Holinſhead's** Caſe; where the Words were, *Thou art a Bawd, and I will prove thee a Bawd*; and becauſe no Action lay at Common Law, a Prohibition was deny'd.

A Prohibition was moved for to the Spiritual Court upon a Libel there for calling the Plaintiff a *Bawd.* But the Court, after Argument and Time taken to conſider thereof, reſolv'd, That a Prohibition did not lie, becauſe the Word is not actionable at Common Law. Mich. 12 Geo. 2. B R. Locky v. Dangerfield.—— And denied the Caſe in Raym. 115. Ward v. Marſh —— A Prohibition was denied for the Words, *Thou art a* * *Bawd*, notwithſtanding it was objected, That the Words were *ſpoken at Weſtminſter*, and that the City of Weſtminſter is an ancient City, and that there is an ancient Cuſtom within the ſaid City that Whores ſhall be puniſhed by Impriſonment; and alſo that an *Action had been brought for theſe Words* in the Marſhall's Court, *and Judgment for the Plaintiff.* 10 Mod. 384. Hill. 3 Geo. 1. B. R. Savil v. Kirby.

* S P. 2 Salk. 552. pl. 15. Mich. 1 Ann. B. R. in the Caſe of Galizard v. Rigault

14. **If a Woman ſues another for ſaying to her theſe Words,** Thou art a Queane, **a Prohibition lies; becauſe it is not well known** what is intended by the Word Queane, **and it is but a Word of Anger. Tr. 3 Car. B. R. between** *Blackſhaw* **and** *Stephens*, **per Cur. Prohibition was granted. Mich. 8 Car. B. R. between** *Yates* **and** *Glover*, **a Prohibition was granted.**

15. **If a Man ſays to another,** Thou art the Son of a Whore, and thy Mother was a Bitch, **and he ſues in the Eccleſiaſtical Court for this, a Prohibition lies, becauſe thoſe are but Words of Anger. Mich. 3 Car. between** *Lownes* **and** *Sir Arnold Herbert*, **a Prohibition was granted.** Prohibition was pray'd to the Eccleſiaſtical Court for calling one *Rogue and Raſcal and Son of a Whore*, becauſe they are only Words of Heat and Paſſion, and for that Purpoſe this Caſe of Lownes v. Herbert was cited; But the Prohibition was deny'd per tot. Cur. for the Words import, That his Mother is a Whore and he a Baſtard; but in the Caſe in Rolls, the Words coupled with (*Thy Mother is a Bitch*) *makes all the Words inſenſible*; but here they are an Eccleſiaſtical Scandal. And in another Suit by the Mother for the ſame Words, a Prohibition was deny'd, for both the Mother and Son are ſcandalized by the Words. 3 Lev. 119. Trin. 35 Car. 2. C B Vincent v. Alpy —— S. C. cited and approv'd. 11 Mod. 117. Trin. 6 Ann. B. R. in the Caſe of **Mayo. Horſe.** Where *Libel* was in the Spiritual Court by the Mother and Son *for calling the Son Baſtard and his Mother a Whore by Implication*; And a Prohibition was deny'd.

Prohibition lies for calling one *Whoreſon.* Per Richardſon; Lat. 156. in the Caſe of Lewis v. Whitton cites Mich 6 Jac. B. R. Cradock v Thomas.

A Libel &c. for theſe Words, *Thou art the Son of a Whore, and thy Mother ſtood in a White Sheet for a Baſtard*, * *or Words to that Effect.* It was moved for a Prohibition, becauſe theſe are only Words of Heat and Paſſion. But to that the Court anſwer'd, That if it had been only for the firſt Words, (viz.) Thou art the Son of a Whore, theſe would have been only Words of Heat; but here he comes to Particulars, viz. (Stood in a White Sheet) Then it was moved, That here it is not a poſitive Affirmation in the Libel of ſpeaking the Words, but theſe, or *Words to that Effect.* But to that the Court anſwer'd, That this *is their uſual Form* in the Spiritual Court; and ſo for Time they ſay, in the Months of January, February &c. all the Months of the Year. But Atkins inclined, That that was Naught; but all the reſt Contra, and ſo they would grant no Prohibition. Freem. Rep. 295. pl. 347. Trin. 1678. C. B. Anon ——See (P) pl. 2.

It was ſaid by Holt Ch J. That if A. calls B. a *Son of a Whore*, He can't Libel in the Spiritual Court, but his Mother may; becauſe in this Caſe 'tis *no Spiritual Defamation to the Son, but 'tis to the Mother.* 11 Mod. 112, 113. Paſch. 6 Ann. B. R. Hoskins v. Lee.

16. **If a Man ſays to a Woman,** Thou art a Whore and thy Children are Baſtards, **and for this the Woman ſues in Court Chriſtian, no Prohibition lies, for the Statute El. of Baſtards** *But* where Libel was &c. for ſaying, Thou ſayes

art a *Whore and a Bawd and keepeſt a Bawdy-Houſe*, ſaves the Eccleſiaſtical Juriſdiction. Mich. 3 Car. B. R. between *Wallis* and *Procter* per Cur. Prohibition was denied.

a Prohibition was granted per tot. Cur. For ſaying, Thou art a Bawd, and keepeſt a Bawdy-Houſe is puniſhable by the Common Law; and for ſaying, Thou art a *Whore*, *without* making *mention in particular*, is not to be puniſh'd in the Spiritual Court; and a Precedent was ſhewn. Mich. 3 Jac. Nichols's Caſe, That a Prohibition lies for ſaying, Thou art *Whore, and a Tainted Whore, and a Dirty Whore*. Jo. 44. Mich. 21 Jac. C. B. Binch v. Wood. —— *So* it was held per Cur. That ſaying thou art *a Whore and a Thief*, or thou keepeſt a Bawdy-Houſe, are Temporal Matters, and the Party ſhall not proceed in the Spiritual Court; whereas if it were only, *Thou art a Whore*, a *Libel lies* in the Spiritual Court. 2 Salk. 552. pl. 15. Mich. 1 Ann. B. R. Galizard v. Rigault.

Libel was for calling a Woman *Impudent Whore*. It was objected, That it was only a Word of Paſſion, and that later Opinions have been, that unleſs ſome Act of Fornication was expreſs'd, a Prohibition ſhould be granted. But it was denied, becauſe Whoredom is an Offence of Spiritual Cognizance. 1 Vent 7. Hill. 20 & 21 Car. 2. B. R. Herbert v. Merit.—— Sid. 404. S. C by Name of Mellet v. Herbert, ſays, This Caſe was ruled upon View of Precedents, which formerly were, that Prohibition ſhould go, but of late that it ſhould not.

So Prohibition was pray'd to ſtay a Suit for calling a Woman *Whore*, but upon Conſideration, after two Arguments at the Bar, and on the Bench, it was deny'd; for it is an Eccleſiaſtical Slander, and examinable and puniſhable in the Eccleſiaſtical Court, and not to be conſider'd only as Words of Scolding and Heat. 2 Lev. 63. Trin. 24 Car. 2. B. R. Betniff v. Pepple.——— S. P. Freem. Rep. 43. pl. 51. Trin. 1672. B. R. Medliff & Ux. v. Buckold & Ux. and it ſeems to be S. C.——— S. C. of Betniff v. Pipple. Vent. 220. ſays, It was for Words ſpoken of the Miſtreſs to her Servant, (viz.) *Go tell thy Miſtreſs Whore, ſhe, is a Whore, and I will prove it.* Hale Ch. J. ſaid, That they cannot be Words of Heat, as if ſpoken when the Parties had been ſcolding, but were ſpoken deliberately to the Servant in the Party's Abſence; and ſaid, That formerly they would not prohibit unleſs the Words implied ſome Act done, as in Caſe of Eaton v. Ayloffe Cro. C. 110. but 'tis reaſonable this Suit ſhould proceed, it being for Matter of Slander, which is to be puniſhed by publick Penance; ſo no Prohibition was granted.———But Trin. 1678. B. R. A Prohibition was granted to a Suit for calling a Woman Whore, becauſe only a Word of Heat and Paſſion. Freem. Rep. 296. pl. 347. Anon.

Where the Words were *You are a Whore and ply in Moorfields*; The Suggeſtion for a Prohibition was, That the Words were *ſpoke in London* where an Action lies for ſuch Words; And a Prohibition was granted for that Reaſon; For otherwiſe Suits might have been in the Spiritual Court for ſuch Words, tho' not ſingly for the Word Whore, it being a Common Word of Brawling; But otherwiſe where joined with other Words, which ſhew the Intent to defame in that Kind. Vent. 343. Mich. 31 Car. 2. B. R. Anon. *But* for ſaying *you are a Common Woman*, and *ſuch Women, as you are, never have any Children*, the Suggeſtion for a Prohibition was, that there was a Cuſtom in London to puniſh Whores by Carting and Whipping &c. and averred, That if any ſuch Words were ſpoken by him, they were ſpoken in London &c. a Prohibition was denied per tot. Cur. becauſe this Cuſtom extends only where the Woman is directly called Whore, and not to Words from which it may be collected that ſhe is a Whore. 2 Lutw. 1039. Hill. 3. W. 3. Houblin v. Milner. —— *So* where a Libel was for ſaying, *Thou art a cuckoldly old Dog, call down the Bitch your Wife* it was ſuggeged here as in the Caſe above about the Cuſtom of London, whereupon a Prohibition was granted, and it was now moved for a Conſultation, upon the Reaſons in the abovementioned Caſe, that the Words muſt be directly and expreſsly defamatory, and inſiſted upon the ſaid Caſe; But per Cur. That Caſe hath been denied to be Law by this Court, and it hath been ruled, That any Words, which are defamatory and puniſhable in the Spiritual Court, are triable in London by the Cuſtom there in an Action on the Caſe, wherein Damages may be recovered, ſo in the principal Caſe the Prohibition was held good, and the Conſultation was denied. 8 Mod. 115. Hill. 9 Geo. 1723. Hotchkis v. Corbett ——Upon Suggeſtion of the Words being actionable in London by the Cuſtom for calling a Woman Whore, the Court would not grant a Prohibition, *without Oath made, that if any ſuch Words were ſpoke, they were ſpoke in London and not elſewhere.* 4 Mod. 367. 6 W. & M. B. R. Anon.

Libel &c. for theſe Words *You are a damn'd Bitch Whore, and a Pocky Whore, and if you have not the Itch you have the Pox*; and moved for a Prohibition, becauſe an Action lies at Common Law; and a Difference was taken, where the Word *Pox* could not be intended but of the *French Pox*, by the Words that were ſpoken with it, there Action lies; and Holt ſaid, That where the Word *Pox* was joined with the Word *Whore*, it ſhould be intended of the *French Pox*, and Prohibition granted. 12. Mod. 242. Mich. 10 W. 3. Grimes v. Lovel. ——— S. P. in the ſame Term 12 Mod. 248. Whitfield v. Powel.

But where Words were, You are a *Brandy-noſed Whore, and you Stink of Brandy*; It was moved for a Prohibition that the Words rather charged Intemperance than Incontinency, but the Prohibition was denied. 2 Salk. 693. Paſch. 4 Annæ B. R. Acebury v. Barton. —— 11 Mod 48. pl. 15. S. C.

Libel &c. for theſe Words S. F. Wife of R. F. is a *Whore*, and *her Husband is a Cuckold*, *and* that *ſhe brought up his Daughter to follow the ſame Trade, and to be a Whore like herſelf*, a Prohibition was moved for, and granted Niſi, but afterwards was diſcharged. Lutw. 1037. Mich. 5 W. & M. Moore v. Fawcet.

A Libel was for Saying, *She had a Child at S.* a Prohibition was prayedfor, but denied, it being a Kind of Fornication. 2 Keb. 335. pl. 62. Hill. 19 & 20 Car. 2. B. R. Hodſtſon v. Brown.

So for theſe Words *ſpoken in London* (viz) *Thou hadſt a Baſtard after thy Husband's Death.* It being after Sentence, Court doubted whether to grant a Prohibition, and yet per Cur. the Plaintiff, notwithſtanding the Sentence, may bring an Action in London for the ſame Words, to which this Sentence cannot be pleaded in Bar; and ſo the Party be doubly puniſhed for one and the ſame Thing. Curia adviſare vult. Carth. 213 Hill. 3 W. & M. B. R. Hawkins v. Cook. ——— Show 237. S. C. by Name of Coke v. Hawkins.

Rule

Rule was to ſhew Cauſe why a Prohibition ſhould not go to a Suit &c. for theſe Words, *She was never married, and never had a Husband* (and *what is her hopeful Son*) *Innuendo*, That *ſhe was a Whore*; And upon Debate the Rule was diſcharged, for the Court was clear in Opinion that theſe Words were a Spiritual Defamation. Carth. 498. Mich. 11 W. 3. B. R. Pliſs v. Smith.

A. ſaid to B. That *ſhe made her Husband a Cuckold*; B. libelled againſt A. in the Spiritual Court; and it was moved, that the Words were *ſpoken in London*, and that tho' it is not *calling her Whore* directly, yet it is calling her ſo *by Implication*. Per Holt Ch. J. if the Cuſtom of London extends to puniſh a Woman that makes her Husband a Cuckold, then a Prohibition may be granted; For the Foundation to grant a Prohibition for calling a Woman Whore in London is, becauſe they by Cuſtom puniſh Whores there by Carting them, and an Action lies there for calling a Woman Whore; And afterwards at another Day this Term they granted a Prohibition, becauſe theſe Words are actionable in London. 11 Mod. 195. Mich. 7 Ann B. R. Bennet v. King.

17. **If a Man ſays to another,** Thou art a Drunkard, or a drunken Fellow, or an idle drunken Fellow, **if a Suit be in the Spiritual Court for this, a Prohibition lies; for this is not Spiritual Slander. Mich. 8 Car. B. R. * between** *Starr and Cuckow.* **Prohibition was granted; For they are Words of Heat and Paſſion, and not any Spiritual Defamation. P. 15 Car. B. R. † between** *Haynes* and *Poynter*, **the Words were,** Thou art a Drunkard, and drunk 3 Times a Week; **Prohibition was granted againſt the Opinion of Barkley. But after Mich. 15 Car. it was moved again, and per Cur. Prohibition was granted; for the Court ſaid they ſhould not hold Plea of a Defamation, where they have not Original and Direct Cognizance of the Fact whereof he is accuſed, as they have not of Drunkenneſs, unleſs as an Offence againſt the Ten Commandments, as all Sins are.**

* Cro. C. 285. Cucko v. Starre, S. C. And 3 Juſtices were for the Prohibition, for the Words are but *Convitium temporale, and a common Phraſe of Brawling*; but Richardſon doubted, becauſe either Court might meddle with Drunkenneſs to puniſh it; ſo that it is not meerly Temporal; but he aſſented to the Grant of a Prohibition, and the Party may, if he will, after Declaration, demur thereto. And a Prohibition was granted.—Jo. 305. pl. 14. S. C. And Jones ſaid, That when he was Juſtice in C. B. a Prohibition was awarded for ſuch Words in Martin Colthorp's Caſe.——S. C. Cro. C. 309 by Name of **Starre v. Buckhold**, a Prohibition was awarded, becauſe theſe Words *tend to, and are puniſhable as a Temporal Offence*, and not in the Eccleſiaſtical Court.

† Jo. 441. Mich. 15 Car. B. R. Swayne's Caſe ſeems to be S. C. where the Words were, *Thou art a common Drunkard*, and a Prohibition was granted.——Mar. 6. pl. 11. Anon. but is S. C.——Ibid. 66 pl. 103. S. C———Per Jones J. If one libels for calling him *a Drunkard*, a Prohibition does not lie; but otherwiſe it is for ſaying, that *he was drunk*. Richardſon ſaid quære if not for another Reaſon, [viz] Becauſe the Act is puniſhable by the Statute. Lat. 155. 156. in Caſe of Lewen v. Whitton.

Where a Libel was for ſaying to a Parſon, viz. *Thou art a pitiful drunken Parſon and a drunken Puppy*, a Prohibition was granted, notwithſtanding they were ſpoke of a Parſon. 3 Salk. 288. pl. 9. Paſch. 2 Ann. Brown v. Tanner.

18. **If a Man ſays to another,** thou art a Cuckoldly Knave, **and for this he and his Wife ſue in the Spiritual Court for Defamation, no Prohibition lies; becauſe the Words amount to a Spiritual Defamation, to wit,** that the Wife was incontinent. **Hill. 9 Car. B. R. between** *Iles and Cobbet*, **per Curiam, a Prohibition was denied.**

Cro. C 339. Gobbet's Caſe. S. C. accordingly. ——Prohibition was granted to a Libel for calling another *Cuckold*; for they are Words of Paſſion, and the ſpeaking of them not puniſhable there. Sid. 248. pl. 14. Paſch. 17 Car. 2 Knight v. Jacob.——Keb 890. pl. 53. S. C. Twiſden and Keeling J. held clearly that it was grantable; but Hyde and Windham doubted, but ordered Cauſe to be ſhewn why it ſhould not be granted.

Defendant was ſued in the Spiritual Court for ſpeaking theſe Words, (viz.) He is a *Cuckold and a Wittal*, which is *worſe than a Cuckold, and J. S. hath lain with A.'s Wife*; it was alleg'd that for ſuch Words of Spleen Prohibitions have uſually been granted; but upon Adviſement the Court all agreed that no Prohibition ſhould be granted; for tho' the firſt Words are too general, yet being coupled with a particular Charge as to a particular Perſon, they are now not Words of Spleen or uſual Diſcourſe, but a Defamation ſuable in the Spiritual Court. And ſo a Prohibition was denied. Cro. C. 110. Paſch. 4 Car. C. B. Eaton v. Ayloff.

So where the Words were, Thou art a *Cuckold, and a cuckoldly Knave, and a cuckoldly Rogue*; a Prohibition was moved for; and cited 1 Cro. 110. But it was denied per Curiam; for there cannot be a higher Defamation; becauſe it does not only defame the Husband but alſo ſcandal the Wife; for if the Words be true ſhe muſt neceſſarily be a Whore; but if the Words had been ſpoken *adjectively only*, as *cuckoldly Knave*, there perhaps it might have been otherwiſe. Freem. Rep. 44. pl. 53. Trin. 1672. C. B. Davie v. Dorie.———In ſuch a Caſe Prohibition was granted Niſi Cauſa. Cauſe was ſhewn that the *Baron and Feme joining in the Suit*, no Prohibition ſhould go; Otherwiſe if he had ſued alone; for the Words charge her with Incontinency, and ſo it is reaſonable that ſhe ſhould have this Suit in the Spiritual Court to puniſh the Defamation which ſubjects her to Penance in the Eccleſiaſtical Court; but if the Baron had ſued alone, a Prohibition ſhould go, becauſe he incurs no ſuch Danger by

the Speaking of the Words. And of that Opinion was the Court, and diſcharg'd the Rule for the Prohibition. 2 Lev. 66. Mich. 24 Car. 2. B. R. Tozer & ux. v. Davis.——Ibid. ſays that a Prohibition was denied the next Term in a like Caſe, between Luchin and Lightbridge.——S. P. Rul'd by Holt Ch. J. 3 Salk. 288. Hill. 13 W. 3. Anon.

So where the Words were, *He is a Cuckold, with* an *Averment that* in that Country *it ſignifies* that *the Wife is a Whore*; and a Prohibition denied. Comb. 312. Hill. 6 W. 3. B. R. Meriel & uxor. v. Kendal.

So for calling one *Falſe Knave*; for Knave ab initio was no Name of Reproach, but ſignified a Man-ſervant.

19. **If a Man ſays to another,** Thou art a Knave, a Paultry Knave, and a Pockey-fac'd Knave, **and a Suit is in the Spiritual Court for theſe Words, a Prohibition lies. P. 11 Car. B. R. between** *Packer and Moore*, **a Prohibition was granted.**

2 Inſt. 493. ſays it was the Caſe of March v. Beale. ——*So* where it was for calling a Man *Knave, and a Knave indeed*, becauſe the Words could not make him ſubject to any Eccleſiaſtical Cenſure. 2 Salk. 548. Hill. 8 W 3. B. R. Hawkins Caſe.

Note, It was denied by all that the Spiritual Court hath any Juriſdiction to maintain any Suit for calling a Man *Knave*, as Pro Reformatione Morum. Sid. 149. pl. 12. Trin. 15 Car. 2. Anon.——A Prohibition was granted Niſi &c Sid. 393. pl. 26. Mich. 20 Car. 2. B. R. Anon.

S. C. Jo. 320. But there the Words are, That he did keep a Boy to bugger him, *and that he did bugger him*; and a Prohibition was granted by three Juſtices, abſente the Chief Juſtice.

20. **If J. B. ſays to J. D.** It is reported that J. N. did, or does keep in his Houſe a Man or Boy to Bugger, **to which J. D. anſwers,** He, Vile Villain, would have done as much to me; **If J. N. ſues J. D. for this Defamation, averring himſelf to be a Miniſter, a Prohibition lies; becauſe this is not any Spiritual Defamation, and Buggery is made Felony by the Statute. Mich. 8 Car. B. R. between** *Higgon and Coppinger*, * **a Prohibition being granted before, a Conſultation was denied, and after a Demurrer was joined upon the Declaration, and adjudged per Curiam, that the Prohibition is well granted. Intratur. H. 8. Car. Rot. 129. though the Suit in the Spiritual Court was for Words.**

* Fol. 297.

But where Libel &c. was for theſe Words, (viz) Thou art a *forſworn Knave*, for thou *madeſt a falſe Account when thou waſt Churchwarden*; the Defendant ſuggeſted for a Prohibition, that the Diſcuſſing of Perjury belonged to the Temporal Courts; but a Conſultation was granted, becauſe the Perjury was ſuppoſed to be committed about the Execution of his Office of a Churchwarden, which belongs to the Spiritual Juriſdiction. But otherwiſe had it been ſuggeſted to be done concerning a Feoffment, or other temporal Act. Goldsb. 113. pl. 2. Mich. 39 & 40 Eliz. Brown v. Lother.——* See pl. 3.

21. **If A. ſues B. in the Spiritual Court for a Defamation, ſcilicet, for ſaying theſe Words,** That A. was falſe Forſworn before the Judges, in that he ſwore that J. S. was no Tinner; **a Prohibition lies, for an * Action lies at Common Law for theſe Words if it be well laid. Mich. 8 Car. B. R. between** *Robinſon and Taylor*, **Prohibition granted per Curiam.**

22. **If A. a Surrogate, ſues in the Spiritual Court againſt B.** Ex Officio pro Salute Animæ & morum Reformatione ex Promotione **C. becauſe C. being a Proctor of the Spiritual Court, and a Maſter of Arts, the ſaid B. ſaid to him,** Thou art, or He is a Scabbed Knave, and a Pickerel Bum-bailiff; **or thus,** I ſcorn to be abuſed by ſuch a Scabbed Knave, or ſuch a Pickerel Bum-bailiff as thou art; **and avers, that he ſaid this is to defame C. and to contemn the Eccleſiaſtical Juriſdiction, a Prohibition lies; For this is not any Spiritual Slander, nor any Defamation of the Court. Mich. 8 Car. B. R. between** *Cory and Ward*, **per Curiam. And a Prohibition being before granted upon this, and a Plea and Demurrer for a Conſultation, the Court ſeem'd now of Opinion, that no Conſultation ought to be granted. But before this was determined, Cory died.**

Godb. 446. pl 514. Trin. 8 Car. B. R. S. C. but not ſo fully

23. **If a Suit be in the Spiritual Court** Ex Officio pro Reformatione Morum, **becauſe J. S. was a Doctor of Divinity, and Parſon of Shipling in the County of and J. D. ſaid to J. S.** You were twice overthrown by the Pariſhioners of Shipling. J. D. replied,

plied, He lied, It was but Once ; whereupon J. D. replied, He lied, and that he was as good a Man as J. S. for that he was but a Blackſmith's Son, or the Son of a Blackſmith, **a Prohibition lies ; for here is not any Spiritual Slander, and but a returning the Lie upon the Doctor who gave it firſt. Mich. 8 Car. B. R. between** *Hye and Doctor Wells.* **Per Curiam, except Richardſon, a Prohibition before granted, and now Demurrer for a Conſultation, the Prohibition ſhall ſtand. Mich. 9 Car. this being moved again, per Curiam it ſeems that the Prohibition ſhall ſtand.**

ſtated ; Et Adjornatur. —A. (a *Parſon*) ſued the Plaintiff in the Spiritual Court for theſe Words, *Thou art a Knave, a Liar and a Raſcal.*

It was moved for a Prohibition, becauſe they are only Words of Heat and Scolding ; and cited 2 Roll. 296. No. 19. 297. No 22. 23. And if he had ſaid he had been a *Common Liar*, it had been Cauſe of Deprivation. And Per Ellis, then certainly it had been good Cauſe to ſue in the Spiritual Court ; Per Atkins, He is a Liar if he tell but one Lie, and why ſhould we intend it in the worſt Senſe of a Common Liar ; ſo that the Queſtion is, How it ſhall be intended ? Vaughan ſaid, That Caſe in Roll. 297. charges him with one particular Act only, viz. of lying upon the Subject Matter. Sed adjornatur. Freem. Rep. 80, 81. pl. 100. Paſch. 1673 Gloyne v. Gilbert.

24. **If A. B. a Feme, ſays of J. S. a Miniſter,** He is a worthy Preacher, he preaches againſt Pride, and brings a Trullerud to Church with him, (innuendo his Wife) my Husband will not ſuffer me to be abuſed by ſuch a Knave; **this is a Spiritual Defamation, for which, if a Suit be in the Spiritual Court, no Prohibition ſhall be granted. P. 11 Car. B. R. between** *Vaughan and Dantſey*, **per Curiam Prohibition denied.**

A Libel was for ſaying of a Parſon, *He preaches nothing but Lies and Malice in the Pulpit.* It was mov'd

for a Prohibition, becauſe the Words are actionable at Law, and it was granted; but afterwards a Conſultation was granted, becauſe they concern an Eccleſiaſtical Matter and Perſon, and are fit to be tried there. 3 Lev. 17. Paſch. 33 Car. 2. C. B. Cranden v. Walden.———*But* where the Words in the Libel were laid to be, That the ſaid Price (a Parſon) *behav'd himſelf proudly and inſolently*, and *that he was an impudent ignorant Blockhead* ; and that he alſo ſaid and declared, *That the Advice and Exhortations, and other Spiritual Directions of him the ſaid* Price *from the Pulpit, are not fit to be taken*, and *that he was not fit to give the Sacrament* ; and *that he the ſaid* Clerk, *ſpeaking to a Third Perſon ſaid, You would not receive the Sacrament from ſuch a Puppy as the ſaid* Price *was, was you to live never ſo long in his Pariſh.* To prevent a Prohibition it was urg'd, That theſe were not Words of Heat but of Deliberation, and highly touch'd him in his Function ; and cited the Caſe of **Crandon and Walden** 3 Lev. 17 But Holt Ch. J. ſaid, (to which the Court did not diſagree) That tho' theſe Words did reflect on him in his Profeſſion, yet ſeeing they do *not charge him with any Thing for which he is obnoxious to the Spiritual Court*, therefore a Prohibition was granted, and it was ordered to come before the Court of B R. by Declaration and Demurrer. 11 Mod. 140. Mich. 6 Ann. B. R. Clerk *v.* Price ——Afterwards in Hill. 7 Ann. This Cauſe came on again, but adjornatur ——Ibid. 208. S. C. but no Judgment.

25. **If A. a Woman, ſues B. in the Spiritual Court, for ſaying of her,** Thou art a Welch Jade, **averring in the Libel, that the ſaid Words ſignify as much as if he ſaid of her that ſhe was a Whore, no Prohibition ſhall be granted ; for this is a Spiritual Defamation. P. 11 Car. B. R. a Conſultation granted, after a Prohibition before granted, upon ſhewing of a Libel for ſaying,** Thou art a * Thief, and a Welch Jade, **but now the Proctor comes into Court, and certifies the Court, that the Word** Thief **was not in the Record in the Spiritual Court, and upon this a Conſultation was granted, between** *Jefferies and Pue*, **per Curiam.**

S. C. Cro. C. 456. Paſch. 12 Car. B. R. Pew v. Jeffries. —— The Husband libell'd for ſaying of his Wife, *She is a drunken Jade, a cheating Jade, and a ſtinking Jade* ; and ſuggeſted in the Libel that Jade ſignified Whore. A Prohibition was denied per tot. Cur. becauſe the Words are malicious. 2 Show. 487. 488. pl. 453. Mich 2 Jac. 2. B. R. Warwick v. Skinner & al.——But the Reporter adds, Sed quære vim Rationis ; for an Averment ſeems neceſſary. And ſays that Mr. Powell (the Counſel that mov'd for the Prohibition) inform'd him that the next Day they had a Prohibition granted in C. B.

* Where the Words *are complicated, ſo that Action will lie for Part* in the Temporal Court, Prohibition will go for all ; as if it had been for ſaying, Thou art a Whore and a Thief, the Suit in the Spiritual Court ſhall not be ſtay'd for the Word Thief only but for the whole. Per Twiſden J. Sid. 404. in the Caſe of Mellet v. Herbett.

26. 9 *E.* 2. *cap.* 4. Enacts, that *in Defamations the Prelates may correct notwithſtanding the King's Prohibition.* See 2 Inſt. 260

27. A Man may ſue in the Spiritual Court for calling him *Falſifier, Adulterer*, or *Uſurer* &c. F. N. B. 51. (I) S. C. cited Mar. 66.

28. If

28. If a Man *give Evidence to an Inqueſt to indict one*, he cannot ſue for this Defamation in Court Chriſtian. 2 Inſt. 493.

29. If a Man call one a *Perjured* Man, he muſt take his Remedy at the Common Law. 2 Inſt. 493.

The Defendant ſued the Plaintiff in the Spiritual Court for ſaying *he was the Father of a Baſtard-child.* The Plaintiff *ſays he ſpoke the Words at the Seſſions*, where the Defendant was *adjudged to be the Father*, and to maintain the Child. The Defendant ſays he ſpoke them out of Seſſions. And the Plaintiff demurs, and had the Prohibition, per Curiam; for by the Statute of the Seſſions are made Judges of the Fathers of Baſtard-children; and therefore they ſhall not try it over again in the Spiritual Court; for he is legally convicted; and it is like as if a Man be convicted of Perjury, any Man may call him Perjur'd, and juſtify. Freem. Rep. 283. pl. 325. Trin. 1673. in B. R. Thornton v. Pickering.

30. C. libelled againſt A. for calling him *Baſtard-maker*. The Defendant juſtified, becauſe he was proved to be ſo before two Juſtices of Peace, according to the Statute 18 Eliz. which Plea the Judges in the Eccleſiaſtical Court refuſed, whereupon a Prohibition was awarded. But per Haughton, if the Defendant had not pleaded the Conviction, but had only juſtified, and offered to prove it, and they had refuſed his Plea, no Prohibition ſhould be granted; But his Remedy had been by Appeal. 2 Roll. Rep. 82. Paſch. 17 Jac. B. R. Cooke's Caſe.

3 Lev. 18. Paſch. 33 Car. 2. C. B. S. C. by Name of Yates v. Lodge, but reports them as ſpoken of a *Parſon*, and ſays the Prohibition was denied, for the Words are very ſcandalous, being ſpoken of a Parſon, tho' not actionable at Common Law.

31. The Plaintiff ſpoke of the Defendant theſe Words: A. is a *Lying Fellow, and has lain with all the Women between H. and B. and lies with ſo many* Women, *that he ſcarce lies with his Wife.* The Plaintiff was ſued for theſe Words in the Eccleſiaſtical Court. A Prohibition was prayed, becauſe theſe Words import a Thing impoſſible, and are too general. But denied per Curiam, becauſe they import him to be an Adulterer; and this is a Matter properly in the Conuſance of the Eccleſiaſtical Court. Freem. Rep. 300. pl. 362. Trin. 1681. C. B. Lodge v. Yates.

32. I *will not venture myſelf with her*, (being ſpoke of a *Midwife licenſed)* ſhe is a *Whore*, and *will kill me, and bury me in the Garden, as ſhe did her Baſtard*; for which Words a Suit was in the Eccleſiaſtical Court, and Prohibition prayed, and upon Cauſe ſhewn denied; the Court taking them not to be actionable at Common Law. Skin. 86. Hill. 35 Car. 2. B. R. Anon.

33. A Libel was for theſe Words, *viz.* She is a *Bitch*, a *Whore*, and an *Old Bawd*. A Prohibition was prayed, becauſe ſome of the Words are actionable at Law, and ſome puniſhable in the Spiritual Court, and ſo prayed a Prohibition Quoad thoſe Words that are Actionable at Law; and it was granted, becauſe the Words were an Intire Sentence, and ſpoken altogether; and if a Prohibition ſhould not be granted, the Plaintiff might be doubly vexed. 3 Mod. 74. Mich. 1 Jac. 2. B. R. Anon.

34. A Libel was for ſaying, *You are a Rogue and a Raſcal, and have hired Fellows to ſwear falſe.* It was ſuggeſted for a Prohibition, That though the Words ſhould not be deemed Words of Heat &c. but adviſed and malicious, then they import an Offence againſt a Statute Law, and, That where no Suit lies for the Principal in that Court, no Libel can be there for Defamation in the charging ſuch Offence. And a Prohibition was granted. 2 Show. 454. pl. 417. Mich. 1 Jac. 2. B. R. Venners v. Allen.

35. Prohibition was granted to the Spiritual Court upon a Libel, for calling him *Rogue and Raſcal*, and ſaying, that he *kept a Whore in his Houſe*, and thereupon the Plaintiff there had Sentence. The Defendant appealed to the Archives, where the Sentence was affirmed and remanded, and then appealed to the Delegates, and was thence remanded for Non-Proſecution there. Upon a Motion to diſcharge the Prohibition it was inſiſted, That the Words were only of Heat and Scolding, and to ſay that the Plaintiff kept a Whore in his Houſe, ſhall not be

be underſtood that he knew her not to be ſo, but that he kept her as a Whore, eſpecially being after Sentence, and of that Opinion was the Court, and granted a Conſultation. 3 Lev. 350. Paſch. 5 W. & M. C. B. Elliot v. Chamberlain.

36. A Libel was for theſe Words, You are a *Rogue, Raſcal, Whore-Maſter, and Son of a Perjured Affidavit Bitch.* A Prohibition being moved for, all the Words were waived but that of Whore-Maſter; and it was urged, That this was only a Word of Heat. But per Holt Ch. J. To ſay ſo of a Man is the ſame as calling a Woman Whore, which is an Eccleſiaſtical Slander; That to call a Man *Cuckold* was not an Eccleſiaſtical Slander, but *Wittal* was, for that imports his Knowledge and Conſent to the Adultery of his Wife; but to call a Man *Impudent Brazen-fac'd Belzebub* were Words of Paſſion, and import no Crime nor Diſcredit any more than *Devil*, or *Prince of Darkneſs*. 2 Salk. 692. Mich. 5 W. & M. B. R. Smith v. Wood.

S. C. Comb. 226. Dolben ſaid, That a Prohibition had often been denied for calling one Whore, and there was the like Reaſon for Whore-maſter; and cited 1 Cro. 110. Sid. 248. And 1 Cro. 332. But Eyre J. ſaid that that Caſe had been ſince exploded.——S. C. Skin. 390. And that the Prohibition was denied per tot. Cur. and they ſaid they would not encourage defamatory Words.

37. Libel was for theſe Words ſpoken *of a Parſon*, he *has no Senſe*, he *is a Dunce and a Blockhead*, and *he wondered the Biſhop would lay his Hands on ſuch a Fellow*, and that he *deſerved to have his Gown pulled over his Ears.* A Prohibition was granted; for a Parſon is not puniſhable in the Spiritual Court for being a Blockhead more than another Man; and it being urg'd, that he might be deprived for want of Learning, Holt Ch. J. ſaid, if that be his Caſe, he muſt bring his Action at Law, becauſe Deprivation is a Temporal Damage. And a Prohibition was granted. 2 Salk. 692. pl. 3. Hill. 10 W. 3. B. R. Coxeter v. Parſons.

S. C. 12 Mod. 231. accordingly.

38. A Motion was made for a Prohibition to the Spiritual Court, upon a Libel there for theſe Words, *He is a great Rogue, As great a Rogue as ever was hanged, and deſerves to be hanged more than Dr. Pims*; a Prohibition was granted, becauſe no Spiritual Defamation. 11 Mod. 112. Paſch. 6 Ann. B. R. Hoskins v. Lee.

(O) Where the *Spiritual and Common Law differ.* If the Suit be according to the Spiritual Law, a Prohibition ſhall be granted. *In the Matter.* Fol. 298.

1. IF a Man buys Wood, and expends it in his Houſe, though the Vendee may be ſued for Tythes of it by the Spiritual Law at the Election of the Parſon, yet ſince he ought not by the Common Law, becauſe he expends it in his Houſe, a Prohibition ſhall be granted, as was granted P. 14 Ja. B. between Parſon *Ellis and Drake.* See Diſmes' (Z)

2. So if a Leſſee of Paſture rendering Rent be ſued for Tithes of the Rent and not in Kind, a Prohibition lies, becauſe it is againſt the Common Law; For he ought to ſue for Tythes in Kind, as was adjudged, 14 Ja. *Ellis and Drake* before. See Diſmes (S) (T) pl. 1. S. C.

3. If A. gives a Legacy to B. and makes C. his Executor, and dies, and after C. dies Inteſtate, and D. takes Letters of Adminiſtration of the Goods of C. and after B. ſues D. as Adminiſtrator of C. for this Legacy, ſuppoſing C. when he was Executor, to have waſted the Goods of A. a Prohibition lies; becauſe by the Common Law this was a Perſonal Tort for which the Adminiſtrator cannot be charged. P. 11. Car. B. R. between *Amend and Fotherby* by 2 Juſtices againſt one. But ſince this Caſe Adminiſtrators of rightful Executors &c have been made chargeable by Statutes, for which ſee Devaſtavit.

4. Where a Man *grants the Tenth Part over and above the Tithes, which he ought to pay to the Church*, there, of this the Lay Court ſhall have Juriſdiction. Br. Diſmes &c. pl. 1. cites 44 E. 3. 5.

5. The *Defendant in a Quare Impedit (pending the Suit in B. R.) libelled againſt S.* one of the Pariſhioners of the Church in Queſtion *for Tithes*, and De Jure Rectoriæ, *alleging, That he is Verus & Indubitatus Rector* &c. *S. pleaded* there, *That G. was not Parſon, but that M. was*; which Plea they refuſed, and gave Sentence againſt S. and S. pray'd a Prohibition, for that it *appears* to the Court of B. R. *by a Verdict given here, That M. and not G. is the true Parſon.* Coke Ch. J. thought a Prohibition ſhould be granted; for ſhould G. have the Tithes, M. might alſo charge S. and ſo S. would be twice charg'd; and it appears to the Court, That M. is the true Parſon, and yet they of the Spiritual Court will certainly ſentence G. to be the true Parſon, becauſe they look upon M's Inſtitution to be void by reaſon of a Caveat enter'd, in which Reſpect our Law and theirs differ Ex Oppoſito; for the Libel is, That G. is Verus & Indubitatus Rector, and that the Suit is De Jure & Titulo Rectoriæ, whereas Parſon or Not Parſon is triable by the Common Law; quod fuit conceſſum Per Doderidge, who ſaid, That Parſon or Not Parſon comprehends Induction; which Coke granted, and a Prohibition was granted. 1 Roll. Rep. 228. pl. 36. Trin. 13 Jac. B. R. Glover v. Shedd.

6. It was agreed per Cur. That *Real Compoſitions for Endowment of Vicarages* ſhall be expounded by the Judges of the Common Law, and therefore if the Spiritual Court meddles with it a Prohibition lies. Litt. Rep. 263. Paſch. 5 Car. C. B. Caſe of Vicarages.

Gill v. William. Keb. 845. pl. 39. Adjornatur. But Ibid. 877. 878. pl. 29. Prohibition was denied; And per Hyde, In ſuit for a Legacy againſt Adminiſtrator of Executor on Deviſe by the firſt Teſtator, if by their Law Adminiſtrator to Executor be ſo to the firſt Teſtator, they have at worſt proceeded Inverſo Ordine, in which Caſe it is proper to appeal.

7. A. made 2 *Executors B. and C.* and died; *B. made J. N. his Executor* and died; *C. died inteſtate*, A *Legatee of A. ſu'd J. N. in the Spiritual Court for his Legacy*, who pleaded this Matter, but they there refuſed the Plea; whereupon he pray'd a Prohibition, but it was deny'd, becauſe the Matter is Teſtamentary; and perhaps J. N. has all the Goods in his Hands, and is Executor De ſon tort, and that there is no body elſe in this Caſe to be ſu'd to recover the Legacy from; And tho' the Survivor by our Law ſhall have all, it is not ſo perhaps in their Law, to which this Matter belongs; And if they proceed ill he ought to appeal, but this Court will not prohibit them; and a Prohibition was denied. Lev. 164. Paſch. 17 Car. 2. B. R. Guillan v. Gill.

8. When a Queſtion ariſes concerning the Juriſdiction of the Spiritual Court, as whether they ought to have the *Probate of ſuch a Will?* whether ſuch a Diſpoſition of a Perſonal Eſtate be a *Will or not?* whether ſuch a Will ought *to be proved before a Peculiar or before the Ordinary?* whether *by the Archbiſhop of one Province or another*, or both? and what ſhall be *bona Notabilia?* In theſe or the like Caſes the Common Law retains the Juriſdiction of Determining. Per North Ch. J. 1 Mod. 211. pl. 44. Paſch. 28 Car. 2. in C. B. Anon.

(P) Where the Temporal and Spiritual Law differ *in the Manner of the Suit.*

Roll. Rep. 426. pl. 19. Mich. 14 Jac. S. C. See (Q) pl. 10.—By the Rules of the

1. IF **Baron and Feme are** divorced Cauſa Adulterii, **and after the** Feme ſues alone **without the Baron** for a Defamation; **tho' the Divorce does not diſſolve the Marriage, yet becauſe the Feme may by the Courſe of the Spiritual Law ſue alone in ſuch Caſe, No Prohibition ſhall be granted, tho' it be contrary to the uſage of our Law. By Reports.** *Motam and Motam* **adjudged.**

Spiritual

Spiritual Court a Feme Covert may ſue alone in every one of the following Caſes, viz. When ſhe is *Executor* or *Adminiſtrator*, or *Legatee* or *Legatory*, or *Defaming* or *Defamed*. Per Dr. Pinfold. 10 Mod. 64. Mich. 10 Ann. B. R. in Caſe of D'aeth v. Baux.

2. **If a Man libels in Eccleſiaſtical Court** for ſaying of certain Words (naming them) Aut in Effectu Conſimilia; **Tho' ſuch Declaration be not good at the Common Law, yet ſuch Libel is good by Uſage there, and therefore no Prohibition ſhall be granted. Hill. 11 Ja. B. R. * Palmer's Caſe.**

S. P. And held good by all the Court, except Atkins, who inclin'd that it was naught; but the others held it good, becauſe it is their uſual Form. Freem. Rep. 295. pl. 347. Trin. 1678. C B. Anon.——* S. C. cited Arg. Show. 159. in Caſe of Shatter v. Friend.

3. **If a** Feme Covert **be** ſued **in the Spiritual Court** for Scolding in the Church-yard, **and condemned, and Coſts taxed,** the Baron not being Party to any thing thereof, **yet becauſe it is the Cuſtom of the Spiritual Court, no Prohibition ſhall be granted. Hill. 14. B. R.** *Bennet's* **Caſe. Prohibition denied.**

4. **If a Man be** ſued **in the High Commiſſion Court** Ad Inſtantiam Partis for Inceſt, **and there it** appears that there was a Fact committed, **and a Fame and one witneſs that the Defendant was guilty thereof, yet** becauſe there were not 2 Witneſſes he was put to his Purgation, **becauſe there a Man cannot be condemned by one Witneſs, and he purged himſelf accordingly, and yet there they** gave Coſts to the Party who proſecuted this Suit, **according to their Uſage there in ſuch Caſes no Prohibition ſhall be granted; For tho' he eſcapes the Cenſure of the Court by the Strictneſs of their Law for Want of a Witneſs, yet for the** Preſumption that he is Guilty, **they may well give Coſts according to their Law. P. 11. Ja. B. R.** *Coortnoll's* **Caſe reſolved.**

S. C. cited Arg. Show. 159. in Caſe of Chatter v. Friend.

[5] 8. **upon a Suit * in the Eccleſiaſtical Court** Ad Inſtantiam Partis, **if the** Defendant pleads the King's Pardon, **and after** Coſts are taxed for the Plaintiff, **becauſe the Pardon is in Manner a Confeſſion of the Fact, tho' this be their Cuſtom there, yet a Prohibition ſhall be granted, for in as much as the Matter and Suit is pardoned, the Coſts alſo are gone. H. 11. Ja. B. R.** *Watſon's* **reſolved.**

Fol. 299.

[6] 9. **If a** Baron and Feme **are** ſued **in the Eccleſiaſtical Court** for Polygamy, **and there it** appears that the Feme was married before **to J. S.** within the Age of Conſent, and after diſagreed **at the Age of Conſent, and married the Defendant, and ſo the Court acquitted the Defendants, yet if they** tax Coſts to the Plaintiff, **no Prohibition ſhall be granted, in as much as they have Juriſdiction of the Cauſe, and it is their Uſage to tax Coſts, where the Plaintiff** had Cauſam Litigandi. **Mich. 8. Ja. B.** *Blackdon's* **Caſe. Prohibition denied.**

S. C. 2 Brownl. 36. ſays, That a Prohibition was granted; for that it was Injuſtice to allow Coſts to one that had vex'd him without Cauſe, and when they had given Sentence againſt the Informer.

[7] 10. **If a** Parſon ſues upon the Statute of 2 E 6. **in the Spiritual Court** for the Double Value for not ſetting forth of Tithes, **and the Defendant ſurmiſes that he ſet them forth, and that they** would not admit the Proof of it there by one Witneſs. **No Prohibition lies, becauſe they have Conuſance of the Matter. Hill. 9 Car. B. R. between** *Tolle* **and Sir Edward** *Powel*. **Per Curiam. Prohibition denied.**

2 Wms. Comp. Inc. 8vo. 1122. cap. 57. cites S. C.

[8] 11. **If the** Pariſhioners ſue the Churchwardens **of the Pariſh** to make an Account **in the Eccleſiaſtical Court, and in this Suit** Coſts **of Suit** are taxed for the Pariſhioners **againſt the Churchwardens, and after the** Churchwardens pay the Coſts to one of the Pariſhioners, **and thereupon he, who receives it,** gives a Releaſe **to the Churchwardens of the Coſts, and** this Releaſe is afterwards pleaded **by the Churchwardens againſt the other Pariſhioners in the Eccleſiaſtical Court,** and is diſallowed **there, yet no Prohibition ſhall be granted, becauſe they having Conuſance of the Original (to wit) of the Coſts they ſhall have Conuſance alſo, what ſhall be a ſufficient Payment of them. Mich.**

Mar. 73. ſeems to be S. C.—— The *Churchwardens* of a Pariſh, at the End of their Year *cited the Pariſhioners into the Spiritual Court* to hear their

15 Car.

Accounts paſs'd and audited. The Pariſhioners appeared, and objected to Part of the Account, which after ſome Variation the Judge allowed, and ordered the *Pariſh to pay* 65 *l Coſts* of Suit. The Pariſh appeal'd from this Sentence to the Court of Arches, and pending the Appeal mov'd for a Prohibition; And it was argued, That tho' the Ordinary at the Inſtance of the Pariſhioners *may cite* Churchwardens to bring in their Accounts, as being Officers amenable to him, yet he *cannot take the Accounts* between them, as he has done here, at the Peril of Coſts to the Pariſhioners; but the Pariſh muſt ſettle it among themſelves, or at a Veſtry; and that it had been ſo determined ſeveral Times. And of this Opinion was the Court. And held that where it appears upon the Face of the Proceedings that the Court had no Juriſdiction, a Prohibition may be granted after Sentence. And accordingly a Prohibition was granted. Trin. 13 & 14 Geo. 2. B. R. Adams v. Rudge.

15 Car. B. R. between *Homes* **and** *Godwin*. **Per Curiam, a Prohibition denied.**

9. *Treſpaſs of* 2 *Loads of Underwood taken in D.* the *Defendant ſaid, That the Plaintiff is Parſon of D. and he is Vicar there, and the Underwoods were Tithes ſevered from the* 9 *Parts, and that the Vicars have had it Time out of Mind, and that the Plaintiff came and claimed them as Parcel of his Tithes, and the Defendant took them as his Tithes*, which is the ſame Treſpaſs, Judgment &c. And becauſe it was *after Imparlance* the Defendant could not plead to the Juriſdiction as he might at firſt, becauſe it is between Parſon and Vicar, and yet becauſe it appeared to the Court that it is between *Parſon and Vicar*, and the *Lay Court uſes one* Manner of *Preſcription and Spiritual Court another*, therefore the Court *Ex Officio ouſted them* of Juriſdiction by Award; quod nota. Br. Juriſdiction, pl. 79. cites 22 E. 4. 23.

10. One libelled in the Spiritual Court for Tithes, and *died, and his Executors revived the Suit.* Doderidge J. ſaid, That the Suit being lawfully commenced ſhall continue; For by the Civil Law the Death of the Plaintiff or Defendant is not any Abatement of the Libel; But *they have a Reviver, as the Common Law has a Reſummons in Raviſhment of Ward*, and where a Court is once lawfully poſſeſſed of a Cauſe, and has Juriſdiction, it would be hard to grant a Prohibition, and Prohibition was denied. per tot. Cur. Cro. J. 483. pl. 20. Paſch. 16 Jac. B. R. The Biſhop of Carliſle's Caſe.

11. A Prohibition was prayed to ſtay a Suit againſt J. S. Leſſee of a Rectory, out of which a Penſion was demanded. It was ſuggeſted, That the Lord Biron had 3 Parts in 4 of this Rectory, upon which the Penſion was chargeable, and that the *Suit againſt one alone* ought not to be, as in an Aſſiſe for Rent-charge all the Tertenants are to be named, and here the Party has an Election to ſue a Writ of Annuity, and if ſo, he muſt have named all that had been chargeable. Per Cur. 'Tis true, in our Law it were a good Plea in Abatement, but perhaps their Law and Courſe is otherwiſe, and here they have Juriſdiction, and may proceed according to their own Rules, or if not, you may have an Appeal; whereupon a Prohibition was denied. Vent. 335. Paſch. 31 Car. 2. B. R. Anon.

12. M. being proſecuted in the Spiritual Court by a Proctor for his Fees in a Suit brought by the ſaid M. againſt her then Husband Young to be divorc'd, prays a Prohibition; ſuggeſting, That ſhe was Feme Covert, and as ſuch not liable to be ſued ſingly to pay the Fees. Per Parker Ch. J. If the Spiritual Court has the Juriſdiction, perhaps it is not neceſſary by the Forms of their Law, for the Husband to be named in the Suit, as in the Caſe of an Executrix. And the Reaſon of the Difference between the Common Law and the Civil Law is this, That in the Spiritual Court the Husband, tho' not named, may come in Pro Intereſſe ſuo, and make Defence himſelf, ſhould the Wife deſert the Cauſe. 10 Mod. 261 & 264. Mich. 1 Geo. 1. B. R. Clerk v. Lee.

13. Where a Prohibition is granted *Pro Defectu Triationis* it is upon *Suppoſition of different Rules* eſtabliſhed by the Spiritual and Common Law, as in Caſe of Preſcription. Per Cur. 10 Mod. 272. Mich. 1 Geo. 1. B. R. in the Caſe of Cottingham and Loſts.

FH
MVSEVM
BRITANNICVM